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THIRD SESSION

OF THE

SECOND COUNCIL OF STATE, 1927



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# **Council of State.**

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ADDRESS BY HIS EXCELLENCY THE VICEROY TO THE MEMBERS OF THE COUNCIL OF STATE AND THE LEGISLATIVE ASSEMBLY.

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H. E. THE VICEROY : Gentlemen, little more than a year ago, I invited India to pause and consider seriously the communal situation, and I then appealed to leaders and rank and file to pursue peace and cultivate a spirit of toleration towards one another. For several months past I have had it in mind again to speak to the conscience and heart of India upon that question which still dwarfs all others in her life, but I have felt some doubt as to the most convenient means of doing it. I finally came to the conclusion that there was no more appropriate way of reaching the ear of the multitudes of India than by addressing them through the representatives of India in the Central Legislature. Accordingly I decided, in exercise of the statutory privilege conferred upon me by the Government of India Act, to ask the Members of the Legislature to meet me here to-day, and I am gratified that so large a number of Honourable Members of both Houses should have been able to attend.

Let me recall the salient incidents of India's recent history.

I am not exaggerating when I say that during the 17 months that I have been in India, the whole landscape has been overshadowed by the lowering clouds of communal tension, which have repeatedly discharged their thunderbolts, spreading far throughout the land their devastating havoc.

From April to July last year, Calcutta seemed to be under the mastery of some evil spirit, which so gripped the minds of men that in their insanity they held themselves absolved from the most sacred restraints of human conduct. Honest citizens went abroad in peril of their lives from fanatical attack, and the paralysis that overtook the commercial life of a great metropolis was only less serious than the civic loss that flowed from a naked and unashamed violation of the law, which perforce had to be reasserted by methods drastic and severe. Since then we have seen the



[H. E. the Viceroy.]

same sinister influences at work in Pabna, Rawalpindi, Lahore and many other places, and have been forced to look upon that abyss of unchained human passions that lies too often beneath the surface of habit and of law.

In less than 18 months, so far as numbers are available, the toll taken by this bloody strife has been between 250 and 300 killed, and over 2,500 injured. While angry temper reigns we are not always sensible of the tragedy that lies behind figures such as these. The appreciation of it is dulled in the poisoned atmosphere, which for the time prevails, suggesting that such things are inseparable from the defence of principles jealously revered, and tempting men to forget how frequently in history the attempt has been made to cloak such crimes against society in honourable guise. But let us translate these things into terms of human sorrow and bereavement, and let our minds dwell in pity and in shame upon the broken human lives that they represent, mothers robbed of sons whose welfare they counted more precious than their own, the partnership of lives severed, the promise of young life denied. The sorrows of war are often mercifully redeemed, as many of us have known, by an element of self-sacrifice that transfigures and consecrates them to the achievement of some high purpose. But here, over these domestic battlefields, sorrow holds sway unredeemed by any such transforming power, and speaks only of the senseless and futile passions that have caused it.

Nor are the many houses of mourning the only measure of the damage which is being done to India. Is there not much in Indian social life that still cries out for remedy and reform and which enlightened India of to-day would fain mould otherwise? Nowhere perhaps is the task before the reformers more laborious; for in India civilisation is age-long, immemorial; and all things are deep-rooted in the past. United must be the effort if it is to gain success; and on the successful issue of such work depends the building of the Indian nation. Yet the would-be builders must approach their task sorely handicapped and with heavy heart, so long as the forces to which they would appeal are distracted and torn by present animosities. For nothing wholesome can flourish in unwholesome soil, and no one may hope to build a house to stand against the wind and the rain and the storm of life upon foundations that are rotten and unsound.

And what shall we say of the effect of these troubles upon India's progress in the field of constitutional evolution? There are many who hold that the very reforms that were designed to lead India along the peaceful road of political development have by reason of the political power that they conferred been directly responsible for the aggravation of these anxieties. True it most certainly is that national self-government must be founded upon the self-government and self-control of individuals. Where private citizens do not possess these qualities, political self-government of a nation is an empty name, and merely serves to disguise under an honourable title the continuance of something perilously akin to civil war.

And thus this problem, of which the reactions upon the future of India must be so intimate, is a problem with which Great Britain, not less than India, is vitally concerned. For India desires to win self-government, and it is Great Britain's self-appointed task to guide her to this end. Surely it is evident that those who desire to win, and those who desire to lend assistance in the winning, are mutually and vitally confronted with

the necessity of laying the spectre that besets the path of their common hopes. By the logic of our purpose or desires, we are partners in the task, and no one of us can here shirk or decline responsibility. Of the burden which India's unhappy disunion imposes on Government, the figures I gave earlier in my speech are eloquent. It is our inalienable duty to preserve order and to vindicate the law. We may make mistakes in doing it ; there are few human beings who can avoid them ; but if we make them, they are, believe me, mistakes made in the cause of a genuine attempt to discharge the difficult and painful duty that is ours.

But I cannot reconcile it with my conception of a real and effective partnership in this matter between Great Britain and India to confine the responsibility, either of myself or my Government, to a mere repression of disorder. Necessary as that is, the situation, as I see it to-day, demands a more constructive effort.

A year ago an appeal was made to me by many men of influence and distinction that I should take the initiative in convening a conference to examine any means that might hold out promise of amelioration. For reasons which seemed to me convincing, I thought it inadvisable to take that step ; and I have not wavered in my conviction that my decision was well-founded. But the passage of events between that time and this has compelled me perpetually to review the grounds on which I then formed my judgment. I had hoped that, in answer to my appeal to the communities, it might not have been impossible that they themselves, freely taking counsel together, might have reached an agreement genuine, convinced and thus effective, that would have brought much-desired and long-sought relief from these distractions. In this respect my hopes have been disappointed. Partial agreements, it is true, have been reached in regard to this or that aspect of the problem, reflecting much honour upon those who exposed themselves, I do not doubt, to considerable risk with many of their own friends in making them. But, so far as I can judge, those agreements have failed to offer that fundamental solution of the problem, and to gain that measure of acceptance, which are necessary if we are to win through the present distress. And one condition remains constant, which is, as I said last year, that no conference can offer any hope of success unless those participating in it are truly inspired with a will to peace.

It was with real pleasure that I observed statements recently in the press which indicated that fresh efforts might be made to bring together Hindus and Muslims for the discussion of these matters. Any such attempt deserves the active good-will and support of all who care for India's welfare and good name. I myself have long been considering anxiously whether any action by Government could help to stimulate that general desire of reconciliation without which nothing can be done. It is not easy, or perhaps possible, for me to give a positive or assured answer to these reflections. In matters of this kind, each man must search his own heart and answer for himself whether he does in truth and without reserve desire to play his part as an apostle of peace, and whether those associated with him are like-minded. But this I can say. If it were represented to me by the responsible leaders of the great communities that they thought a useful purpose might be served by my convening a conference myself with the object of frankly facing the causes of these miserable differences, and then in a spirit of determined good-will considering whether any practical solution or mitigation of

[H. E. the Viceroy.]

them could be found, I should welcome it as evidence of a firm resolve to leave no way unsearched that might disclose means of rescuing India from her present unhappy state. And, if these representations were made by those who occupy such a position in their communities as to permit me to assume that the communities would accept and abide by any decisions at which they might arrive on their behalf, then, allying myself with them and such other leaders of public thought as might be willing to assist, I should gladly and cordially throw my whole energies into this honourable quest.

I have been told that any such efforts are foredoomed to failure, and that all we might accomplish would be to contribute a few more barren pages to the story of unprofitable discussions. I do not underestimate the difficulties; I do not minimise the risk of failure. But difficulties are meant to be surmounted, and outward success or failure is not the sole or the final test of conduct in this sphere. After all, many of the greatest ventures in human history have sprung from what the world deemed failures. At any given time the evil forces of life may be so strong that the efforts we can make against them appear unavailing. Yet to allow this thought to drive us into a posture of feeble acquiescence in something against which our whole moral sense rebels, and into losing our will for better things, this surely would be deliberately to turn our back upon everything that makes life worth living.

There is an epitaph in a small country churchyard of England upon an English country gentleman, whose lot had been cast in those unhappy days of English history, when England too was torn by religious strife. It runs as follows :—

“ In the year 1643, when all things sacred were either demolished or profaned, this Church was built by Sir Francis Shirley, Baronet, whose singular praise it is to have done the best things in the worst times, and to have hoped them in the most calamitous.”

I doubt whether higher testimony could be paid to any man, or more concise expression given to the forces by which this world is moved.

There must surely have been times during these latter months when Indian patriots, gazing upon their motherland, bruised by this internecine and senseless struggle, must have been hard put to it to maintain their faith in India's destiny untarnished, and when many must have been even tempted to hate the very name of religion, which ought to be man's greatest solace and reward. Yet may it not be that the purpose of these trials has been to test the calibre of our faith, and that some day when the testing time is past, those who with trust in their hearts, and hope in their eyes, have striven unceasingly to spread kindly feeling among their fellowmen, will reap for India a reward that will repay tenfold the bitter cost at which it has been purchased ?

You will forgive me, Gentlemen, for speaking in a strain that may seem to some to accord ill with the hard facts of life and the common atmosphere of politics. But I believe—and I think India believes—in the power of spiritual forces to assert themselves over their material expression by which they may often be betrayed. And it is because of this belief that is hers and mine that I have ventured once more to trace out the only path along which India can lead her peoples to take their appropriate part in the fulfilment of the ordered purpose for humanity.

## COUNCIL OF STATE.

*Tuesday, 30th August, 1927.*

The Council met in the Council Chamber at Viceregal Lodge at Eleven of the Clock, the Honourable the President in the Chair.

### MEMBERS SWORN.

The Honourable Major-General Alfred Hooton, C.I.E., K. H. P. (Director-General, Indian Medical Service); the Honourable Khan Bahadur Muhammad Buzlullah, C.I.E., O.B.E. (Madras : Nominated Official); the Honourable Mr. W. C. Tudor-Owen (Bombay : Nominated Official); the Honourable Mr. E. H. Berthoud, O.B.E. (Bihar and Orissa : Nominated Official); the Honourable Mr. G. A. Natesan (Madras : Nominated Non-Official) and the Honourable Prince Afsar-ul-Mulk Mirza Muhammad Akram Husain Bahadur (Bengal : Nominated Non-Official).

### QUESTIONS AND ANSWERS.

#### WEIGHTS AND MEASURES USED IN INDIA.

1. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (on behalf of the Honourable Lala Sukhbir Sinha) : (a) Has any enquiry been made on the subject of the different standards of weights and measures in use in India ?

(b) If so, will Government lay the result of the enquiry on the table ?

(c) If not, do Government propose to hold an enquiry ?

THE HONOURABLE SIR GEOFFREY CORBETT : A Committee was appointed by the Government of India in 1913 to enquire into the question of the feasibility of introducing uniform weights and measures throughout India. A copy of the Committee's report is in the Library of the Legislature.

I would also refer the Honourable Member to the Resolution of the Government of India No. 9, dated the 3rd January, 1922, published in the Supplement to the Gazette of India of the 7th of that month which shows the conclusions arrived at by the Government of India on the Committee's recommendations.

#### INTRODUCTION OF LETTER CARDS IN INDIA SIMILAR TO THOSE IN USE IN ENGLAND.

2. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (on behalf of the Honourable Lala Sukhbir Sinha) : Is it under contemplation to introduce letter cards in India similar to those in use in England ?

THE HONOURABLE MR. A. C. MCWATTERS : The answer is in the negative.

#### PILGRIM TAX AT HARDWAR.

3. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (on behalf of the Honourable Lala Sukhbir Sinha) : (a) Will Government be pleased

to state the year when the pilgrim-tax for the Hardwar Municipality that is collected through the Railway Department was first sanctioned by the Government of India and at what rate per head ?

(b) Is the old rate still in force ; if not, when was it raised and on what grounds ?

(c) Does the Municipal Board of Hardwar keep a separate account and fund of this tax, or is it mixed up with the general account ?

(d) Will the Government be pleased to lay on the table a statement of income and expenditure of this tax for the last 12 years, that is, from Kumbh 1915, up to the last Kumbh, April 1927 ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :**

(a) The pilgrim-tax at Hardwar was first sanctioned in 1893 and the rates at which it was originally levied were 1 anna on each person over 12 years of age and  $\frac{1}{2}$  anna on children between the ages of 3 and 12 years.

(b) No. The rates were revised in 1922 and again this year, as under :—

			1922.		1927.
First class passengers	..	..	0 6 0	0 9 0	
Second class passengers	..	..	0 3 0	0 4 6	
Intermediate class passengers	..	..	0 1 6	0 2 3	
Third class passengers	..	..	0 1 0	0 1 6	

Children under three years continue to be exempt and those over 3 and under 12 are charged at half rates. The tax was revised on the first occasion to enable the Municipal Board to finance water supply and lighting schemes, and on the second to help the Board to build up a reserve from which to meet the very heavy expense to which it is put at times of the Kumbh and Adh-Kumbh melas, when pilgrims come to Hardwar from all over India.

(c) and (d). The Government of India have no information on these points.

#### CLAIMS OUTSTANDING BETWEEN THE WAR OFFICE AND THE GOVERNMENT OF INDIA.

4. **THE HONOURABLE RAO SAHIB DR. U. RAMA RAU :** Will the Government of India be pleased to state :

(a) the various claims still outstanding between the British War Office and the Indian Government with regard to the expenditure incurred by the latter on behalf of the former during the world war of 1914 ;

(b) the amount involved in each claim ;

(c) the reason for the delay in recovering the same ; and

(d) whether any steps have been taken to settle the claims ; if not, whether any steps are in contemplation ?

**THE HONOURABLE MR. A. F. L. BRAYNE :** The Honourable Member is referred to the statement of important financial questions outstanding between His Majesty's Government and the Government of India, which was laid on the table on 30th January, 1924, in reply to a question asked by the Honourable Sir Purshotamdas Thakurdas on the 16th July, 1923. The matter has since been

examined in great detail both in India and in England and considerable progress has been made in the negotiations, difficult though they have been. I hope the House will in due course be satisfied that any delay in reaching and announcing the final decision will have been justified by the result of the negotiations.

As regards one of the items in the statement referred to by me, *i.e.*, "Future administration of Aden and incidence of cost", as the House is aware, His Majesty's Government have decided to take over the political and military administration of Aden from the Indian Government, and with effect from 1st April, 1927, to bear all charges connected therewith, subject to a contribution from Indian revenues of £250,000 per annum for the first three years and thereafter £150,000, or one-third of the total cost, whichever is less.

EXPENDITURE INCURRED BY THE GOVERNMENT OF INDIA ON BEHALF OF THE WAR OFFICE IN RESPECT OF THE OPERATIONS IN CHINA.

5. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Will the Government of India be pleased to state :

- (a) the total expenditure incurred up to date by the Government of India on behalf of the British War Office, in respect of the Chinese operations ;
- (b) whether the amount has been recovered from the War Office yet ; if not, what causes the delay ; and
- (c) the monthly savings effected in the military expenditure on account of the despatch of Indian troops to China ?

THE HONOURABLE MR. A. F. L. BRAYNE: (a) The net expenditure incurred in respect of the Chinese operations up to the latest date for which accounts are available is approximately Rs. 58 lakhs.

(b) Advances are being received by the India Office from the War Office and the extra expenditure will be completely recovered shortly when final accounts are sent to the War Office.

(c) The monthly saving to Indian revenues due to absence of troops from India is about Rs. 5 lakhs.

REORGANISATION OF THE MEDICAL SERVICES.

6. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: (a) Have any and, if so, what steps been taken to reorganise the medical services and constitute a new civil medical service for India ?

(b) Will the Government be pleased to state the circumstances under which the posts of Surgeon-General and Inspector-General of Civil Hospitals in the various provinces in India came to be reserved for the members of the Indian Medical Service ?

(c) Have the Government considered the advisability of throwing open the said posts to civil medical men also in future ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH: (a) and (c). The Government of India are still in communication with the Secretary of State on the subject, but hope to make a pronouncement shortly.

(b) The posts were reserved in 1923 by regulations framed under rule 12 of the Devolution Rules.

# LOCATION OF THE OFFICES OF EPIGRAPHY AT OOTACAMUND AND KOTAGIRI.

7. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Will the Government of India be pleased to state :

(a) why the offices of Epigraphy are located at Ootacamund and Kotagiri instead of at Madras ; and

(b) whether there is any special advantage derived in locating these offices at Ootacamund and Kotagiri ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :

(a) The office of the Government Epigraphist for India was transferred to Ootacamund from Simla in order to facilitate the Government Epigraphists' work in connection with Dravidian inscriptions. There is no epigraphical office at Kotagiri. The office of the Assistant Superintendent for Epigraphy, Southern Circle, which is exclusively concerned with South Indian epigraphy, is located in Madras.

(b) The advantages of locating the Government Epigraphist's office at Ootacamund are that the climate conduces to better work than that of Madras and the climate is more suitable for the preservation of the records than that of Madras.

## RECOMMENDATIONS OF THE INDIAN AUXILIARY AND TERRITORIAL FORCES COMMITTEE.

8. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: (a) Will the Government be pleased to state what steps have been taken to give effect to the recommendations of the Auxiliary and Territorial Forces Committee ?

(b) Do Government propose to place their own views and those of the Secretary of State, on this subject, before the Central Legislature and, if so, when ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: With your permission, Sir, I will reply to this and question No. 67 together.

The Honourable Member is referred to the Resolution on the subject published in the Gazette of India of August 20th of this year.

## RECOMMENDATIONS OF THE ECONOMIC ENQUIRY COMMITTEE.

9. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: (a) Will the Government be pleased to state whether any and, if so, what action has been taken on the recommendations of the Economic Enquiry Committee ?

(b) Will the Government kindly lay on the table the opinions received from the various Local Governments on this subject ?

THE HONOURABLE SIR [GEOFFREY CORBETT: (a) The recommendations of the Committee are under the consideration of the Government.

(b) Copies of the replies have been placed in the Library.

## REVISION OF THE PAY OF THE NON-GAZETTED STAFF OF THE EPIGRAPHICAL DEPARTMENT.

10. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Are there any memorials for the revision of the pay of the non-gazetted staff of the Epigraphi-

cal Department still pending disposal and, if so, how long have they been pending? And when are they expected to be disposed of?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** There are no memorials for the revision of the pay of the non-gazetted staff of the Epigraphical Branch of the Archæological Department pending disposal, but the Government of India have under consideration the question of revising the pay of the establishment of the Assistant Archæological Superintendent for Epigraphy, Southern Circle, on which it is hoped to issue orders at an early date.

#### PAY OF OFFICERS OF THE EPIGRAPHICAL DEPARTMENT, ETC.

**11. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU :** (a) What is the scale of pay obtaining for officers of the Epigraphical Department and what are the scales of pay obtaining for corresponding officers, with special qualifications, working in the Archæological section proper and other departments, such as the Geological Survey of India, etc.?

(b) Is there at present any provision made for giving the members of the Epigraphical section, possessing the necessary University qualifications, proper training in Archæology also? If not, why not?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** (a) There is no separate scale of pay for officers for the Epigraphical Branch of the Archæological Department. For the scale of pay of officers of the Archæological and other departments the Honourable Member is referred to the Statutory Rules and Orders, 1924, No. 1395, India, a copy of which is in the Library.

(b) No. Government have received no application from any member of the Epigraphical Branch of the Archæological Survey Department for training in general Archæology. If and when such an application is received it will be considered.

#### GAZETTED POSTS IN THE ARCHÆOLOGICAL DEPARTMENT.

**12. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU :** (a) How many gazetted posts are there in the Archæological Department altogether, and how many are kept open to the qualified Epigraphical hands of the Department?

(b) Have any gazetted posts in the Epigraphical section been filled within recent years, say five or six years, by drafting men from the Archæological section and *vice versa*?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** (a) The Honourable Member is referred to the list of officers in the Archæological Survey Department, a copy of which is placed in the Library of the House. Gazetted officers in the Epigraphical Branch are not excluded from other gazetted posts in the Department if they are qualified for them.

(b) In 1921, the newly created post of Superintendent for Epigraphy in the Epigraphical Branch of the Archæological Department was filled by an officer with previous service on the general side of the Archæological Department. No other officer has within recent years been transferred from the general side of the Department to the Epigraphical Branch. No officer has within recent



years been transferred from the Epigraphical Branch to the general side of the Archæological Department.

**GRANT OF PRESIDENCY AND HILL ALLOWANCES TO THE NON-GAZETTED OFFICERS OF THE EPIGRAPHICAL DEPARTMENT STATIONED IN THE PRESIDENCY TOWNS AND HILL STATIONS.**

13. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : Are the non-gazetted officers of the Epigraphical department stationed in the Presidency-towns and hill stations given, respectively, the presidency and hill allowances ? If not, why not ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : The question of granting a city allowance to the non-gazetted officers of the office of the Assistant Archæological Superintendent for Epigraphy, Southern Circle, is under consideration. No hill allowance is granted to the members of the office of the Government Epigraphist as their pay was revised early this year.

**GRANT OF COMPENSATORY AND HOUSE-RENT ALLOWANCES TO GAZETTED OFFICERS OF THE ARCHÆOLOGICAL DEPARTMENT.**

14. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : (a) Are the gazetted officers of the Archæological Department, stationed in the Presidency-towns and hill stations given compensatory and house-rent allowances as in other Departments ?

(b) Is it true that such allowances are given to the officers of the department stationed at Calcutta, Poona and Rangoon ? Are they similarly given to the officers of the department stationed at the Presidency-town of Madras and the costly hill station Ootacamund ? If not, why are they not given ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : (a) Only officers stationed in the Presidency-town of Calcutta are given compensatory and house-rent allowances.

(b) In Calcutta compensatory and house-rent allowances are given ; in Poona a house-rent allowance is given ; no archæological officer is stationed in Rangoon. Such allowances are not given to officers stationed in Madras and Ootacamund. The question of granting an allowance to the Archæological officer stationed in Madras has not been considered by the Government of India. The case of Ootacamund is not covered by the Finance Department Resolution No. D-5067-C.S.R., dated the 10th October, 1924.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : Will Government take into consideration the fact that the town of Madras is getting very costly and will they consider the advisability of giving a special allowance there ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : They considered the question and it was found that no special allowance was necessary.

**PUBLICATION OF SOUTH INDIAN INSCRIPTIONS.**

15. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : (a) When was the publication of the texts of South Indian inscriptions taken up by the Government ? How many of these inscriptions have been printed off hitherto ?

(b) What was the staff originally provided for the above work and what is its present strength ?

(c) What is the collection up to date and what is the number of inscriptions outstanding ?

(d) In how many years do the Government expect with the present staff continued to complete the publication of these arrears and bring it up to date, so as to publish each year's collection immediately ?

(e) Where are the South Indian inscriptions (1) collected and stored, (2) made ready for the press, and (3) where are they printed ? What is the necessity for keeping the publication branch away from the place of collection and printing ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :**  
(a) The publication of South Indian inscriptions was taken up by Government in 1890, and between that year and 1917 342 texts and translations were issued. In 1922, a new series (of texts only) was started and since then 3,701 texts have been published. Thus 4,043 texts of inscriptions have been published up to this time.

(b) The staff in 1890 is not known. The work of publication of South Indian inscriptions, together with other epigraphical work, is now done by the Government Epigraphist's staff, which consists of three gazetted and five non-gazetted assistants.

(c) 22,087 South Indian inscriptions have been collected up to date, of which 4,043 have been published and 18,044 remain to be published.

(d) In about 17 years.

(e) (1) They are collected throughout Southern India, largely in villages, and are stored in the Government Epigraphist's office in Ootacamund, (2) in Ootacamund ; (3) in Madras. The printing has to be done in Madras because the Government Press is at Madras. As for the expediency of locating the office at Ootacamund the Honourable Member is referred to the reply to question No. 7 (b).

**VOLUME OF PUBLICATION WORK EXPECTED OF THE GOVERNMENT EPIGRAPHIST YEARLY IN CONNECTION WITH THE EPIGRAPHIA INDICA.**

**16. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU :** (a) What is the volume of the publication work expected of the Government Epigraphist every year in connection with the Epigraphia Indica ?

(b) Is he directly entrusted with any other publication than the said Journal ? Is it true that Dr. Hultzsch was issuing yearly 4 parts of the Journal in addition to the collection and publication of the South Indian inscriptions ? Is the Journal issued more often than before since the appointment of a separate Epigraphist for the editing of the Epigraphia Indica ?

(c) Has there been increased output in the publication of the Journal since the appointment of assistants to this officer ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :**  
(a) Four parts each year,

(b) Yes. He is responsible for the publication of the South Indian Inscriptions as well as all epigraphical work generally throughout India ; four parts were expected of Dr. Hultzsch annually, but they were not always up to date. There is no separate Epigraphist for the editing of the Epigraphia Indica.

(c) There is a much larger output in respect of South Indian texts and the Journal is kept more up to date. The assistants referred to were not specially appointed with reference to the needs of the Epigraphia Indica.

#### PUBLICATION OF SOUTH INDIAN INSCRIPTIONS IN THE EPIGRAPHIA INDICA.

17. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: (a) In what languages and scripts are the inscriptions that are published in the Epigraphia Indica ?

(b) Is it true that a fairly good number of inscriptions in the South Indian languages and scripts are being edited in the Journal ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :  
(a) In all ancient Indian languages and scripts, except Moslemic.

(b) Yes.

#### LANGUAGE QUALIFICATIONS OF THE PRESENT EDITOR OF THE EPIGRAPHIA INDICA.

18. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: (a) What are the language qualifications of the present editor of the Journal ?

(b) When was he appointed to the post ?

(c) What was the nature of his service before he was selected for the post ?

(d) What is the total amount of his service ?

(e) For how many years was he actually working in the Epigraphical section before he was appointed the Epigraphist ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :  
(a) He is a M.A., M.O.L. of the Punjab University, and is proficient in the Sanskrit, Pali and Prakrit languages.

(b) In September 1925.

(c) He was a Superintendent for Epigraphy under the Government Epigraphist for four years, an Assistant Superintendent, Archaeological Survey, for three years, and had been in the Archaeological Department for 23 years. Previously he had been Lecturer in Sanskrit at the Punjab University.

(d) 23 years.

(e) 4 years.

#### TOTAL STRENGTH OF THE STAFF OF THE EPIGRAPHICAL SECTION OF THE ARCHAEOLOGICAL DEPARTMENT.

19. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: (a) What is the total strength of the staff (both gazetted and non-gazetted) working in the Epigraphical section of the Archaeological Department ?

(b) Of these how many are attached to the office of the Government Epigraphist for India and what are their language qualifications and their duties, and how long have they been working in the Epigraphical section ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH:

(a) The attention of the Honourable Member is invited to the List of Officers and to the Establishment List, copies of which are placed in the Library.

(b) Three gazetted officers, including the Government Epigraphist, and five non-gazetted officers are attached to the office of the Government Epigraphist. Out of the gazetted officers one is specially qualified in Sanskrit, Pali and Prakrit, the second in Tamil and Telugu and the third in Telugu and Kanarese. They are all University graduates. The non-gazetted staff consists of three clerks with clerical qualifications and two readers, both graduates with qualifications in Telugu, Tamil and Kanarese. The Government Epigraphist edits the Epigraphia Indica and is responsible for the whole epigraphical work of the Department except Moslemic. The Superintendent is responsible for the editing of the South Indian inscriptions and the Assistant Superintendent helps the Government Epigraphist in editing the Epigraphia Indica and in the collection of Kanarese inscriptions in the Bombay Presidency. The duties of the clerks are purely clerical, while the readers prepare material, copy the transcripts prepared by the officers and correct proofs of the text of inscriptions received from the press. The approximate length of service in the Epigraphical branch of the gazetted staff ranges from 5 to 20 years, and of the non-gazetted staff from 3 to 20 years.

LOCATION OF THE OFFICE OF THE SENIOR GOVERNMENT INSPECTOR OF RAILWAYS  
AT OOTACAMUND.

20. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Will the Government be pleased to state :

(a) the reason for locating the office of the Senior Government Inspector of Railways at Ootacamund ;

(b) how often has he travelled to Madras on duty in each year during the past three years ; and

(c) the number and nature of Railway accidents investigated by him during the past three years ?

THE HONOURABLE SIR GEOFFREY CORBETT: (a) Formerly the headquarters of this Senior Government Inspector were in Madras in the cold weather and in Ootacamund in the hot weather. During the cold weather the Senior Government Inspector spends so much of his time on tour that it is just as convenient for his office to be located in Ootacamund as in Madras.

The matter was reviewed in 1926 when it was decided that the balance of advantage lay in locating his office permanently in Ootacamund.

(b) In 1924 (during part of which he was stationed in Madras) once ; in 1925—4 times ; in 1926—7 times.

(c) Two, one was the capsizing of a mixed train and the other the derailment of wagons of a goods train.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Is not Madras more central than Ootacamund? Is it not a fact, Sir, that Madras covers a centre of about 5,000 miles, whereas Ootacamund covers only 200 miles?

THE HONOURABLE SIR GEOFFREY CORBETT: Centre of what?

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: If you take Ootacamund as the centre of a circle, it will cover an area of only 200 miles, whereas if you take Madras as the centre of the circle, it will cover an area of 5,000 miles? Is it not so, Sir?

THE HONOURABLE SIR GEOFFREY CORBETT: That may be correct, Sir?

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: In that case, is it not advisable to have Madras as the headquarters of the Senior Government Inspector?

THE HONOURABLE SIR GEOFFREY CORBETT: Not if he is always on tour.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Is it not a fact, Sir, that the Senior Inspector is staying all through the year at Ootacamund?

THE HONOURABLE SIR GEOFFREY CORBETT: No, Sir.

#### RESTRICTIONS IMPOSED ON MEDICAL MEN WITH REGARD TO THE USE OF OPIUM.

21. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: (a) Is it a fact that the restrictions imposed on medical men with regard to the use of opium still continue in the Madras Presidency?

(b) Will the Government kindly state whether the Resolution moved by me on this subject in the Council of State on 22nd February, 1927, with the Government reply, has been communicated to the Madras Government?

THE HONOURABLE MR. A. F. L. BRAYNE: (a) The Government have no information.

(b) Yes.

THE HONOURABLE MR. V. RAMADAS PANTULU: May I put the question standing in the name of the Honourable Sir Manmohandas Ramji, Sir?

THE HONOURABLE THE PRESIDENT: Yes.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: As this is a very important question, can any other Honourable Member put a question standing in the name of another Honourable Member, Sir?

THE HONOURABLE THE PRESIDENT: There is no reason why the Honourable Mr. Ramadas Pantulu should not put the question.

#### PUBLICATION OF THE REPORTS OF THE SUB-COMMITTEES OF THE INDIAN SANDHURST COMMITTEE.

22. THE HONOURABLE MR. V. RAMADAS PANTULU (on behalf of the Honourable Sir Manmohan Das Ramji): (a) Will the Government be pleased to inform the Council if the sub-committees appointed by the Indian Sandhurst Committee to enquire into conditions of military

training in foreign countries and for the purpose of studying the extent to which suitable candidates for an Army career are to be found in Indian Universities, submitted any reports to the main committee ?

(b) If so, why have not these reports been published along with the Report of the Sandhurst Committee ?

(c) Will the Government publish these reports of sub-committees ?

(d) If so, when will they be published ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) The answer is yes.

(b) These reports formed part of the evidence before the main committee, and the committee incorporated such portions of them as they wished in their main report. Portions of the proceedings of the sub-committee that visited England and of the evidence are confidential and cannot be published.

(c) No, Sir.

(d) Does not arise.

ACCIDENT TO THE DREDGER RECENTLY PURCHASED BY THE HARBOUR AUTHORITIES AT VIZAGAPATAM.

23. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Will the Government be pleased to state :

(a) whether a dredger has been purchased by the harbour authorities at Vizagapatam recently : if so, at what price, and whether that price has been paid in full ;

(b) what were the conditions for delivery of the said dredger ;

(c) whether the said dredger ran ashore about the beginning of April 1927 and with what consequences ;

(d) whether or not there was any officer on board the said dredger at the time of the above accident ;

(e) whether or not there was any storm raging at that time ;

(f) whether the said dredger was towed to Calcutta or not ;

(g) what were the costs of towing the dredger to Calcutta and repairing it respectively ;

(h) who paid the above charges ;

(i) was the dredger insured at the time of the accident ;

(j) whether the Railway Board got information of the above accident from the Madras Port authorities and not from the Vizagapatam authorities ; if so, why ; and

(k) what steps have the Government taken or what steps do they propose to take in connection with the above incident ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) Yes, at the price of £153,280, which has not yet been paid in full.

(b) Payment was to be made by instalments during construction, and on satisfactory conclusion of trials in Great Britain amounting to 80 per cent. of the total price. The remaining 20 per cent. was to be paid in two instalments

after dredging trials in India and on expiry of a six months' period of guarantee in India, and on the expiry of a six months' period of guarantee.

(c) Yes, in March 1927 ; it sustained severe damage.

(d) Yes.

(e) There was a heavy surf.

(f) Yes.

(g) The cost of salvage and towing to Calcutta is estimated at about Rs. 57,000, and of repairs at about Rs. 3,86,000. The completion of repairs awaits the receipt of some materials from England.

(h) Liability for the charges has not yet been fixed.

(i) No.

(j) Information was received from the Vizagapatam harbour authorities.

(k) The matter is at present under reference with the Secretary of State.

#### CONSTRUCTION OF THE VIZAGAPATAM HARBOUR.

24. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : What progress has been made in the construction of the Vizagapatam harbour ?

THE HONOURABLE SIR GEOFFREY CORBETT : The foundations of the Key-Wall and of the transit sheds are about half completed. Dredging work has unfortunately been delayed by an accident to the large dredger, which is now undergoing repairs at Calcutta.

#### RELEASE OF POLITICAL PRISONERS DETAINED UNDER REGULATION III OF 1818.

25. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Do the Government of India contemplate the release of political prisoners detained under Regulation III of 1818 at an early date ? If not, why not ?

THE HONOURABLE MR. H. G. HAIG : I would refer the Honourable Member to the answer that I gave him on the 8th February last.

#### LETTING OUT OF RAILWAY LANDS AT GOALUNDO.

26. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Are lands acquired for Railway purposes at Goalundo and other places being used or let out to business people for other purposes ? Have Government considered whether this practice is in contravention of a High Court ruling and to the detriment of neighbouring landowners ? Do the Government contemplate putting a stop to such practice ?

THE HONOURABLE SIR GEOFFREY CORBETT : Licences for the use of railway land at Goalundo and other places are granted for purposes connected with the working of the Railway, such as vendor's stalls for the supply of food to passengers, the stacking of goods pending despatch by rail or pending removal after arrival by rail, and for oil installations. A fee is charged equivalent to rents prevailing in the neighbourhood, or sufficient to cover interest on the cost of acquisition of the land and of facilities provided, whichever is greater. Government are not aware that this practice contravenes a High Court ruling,

and consider that the benefit to the general public using the Railway outweighs the detriment (if there is any) to neighbouring landowners. Government do not contemplate putting a stop to the practice.

**DETENTION OF DECK PASSENGERS AT THE WHARF IN RANGOON.**

**27. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** Has the attention of the Government been drawn to the great inconvenience felt by deck passengers landing at Rangoon by their detention for 3 or 4 hours in the wharf? If so, what steps do they propose to take to remove this grievance?

**THE HONOURABLE SIR GEOFFREY CORBETT :** The Government of India have caused enquiries to be made and they understand that arrangements are made for the concurrent conduct by the Customs, Police and Port Health Departments in the Port Health Station at Rangoon of the examination of all deck passengers landed there. For the purposes of medical examination three doctors and two nurses are employed to deal with each passenger ship and more if the number of deck passengers exceed 2,000. It is reported that, except in the comparatively rare case of a ship being found on arrival to be infected, the medical examination is carried out at the rate of 1,500 passengers per hour. In so far, therefore, as there is any delay in dealing with deck passengers on arrival in Rangoon, it is due to the fact that the deck passenger traffic in Rangoon is very heavy. The Government of India are satisfied that all possible steps are already taken to reduce the inconvenience involved to a minimum.

**REPORT OF THE BACK BAY ENQUIRY COMMITTEE.**

**28. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** Has any action been taken on the report of the Back Bay Enquiry Committee at Bombay? If so, what?

**THE HONOURABLE MR. A. C. MCWATTERS :** So far as future operations are concerned, the Government of India have decided that it must be left to the Government of Bombay to take such action as they think desirable on the recommendations of the Committee. The Report of the Committee, so far as it relates to other matters, has been, and still is, under examination by the Local Government and the Government of India.

**RECOMMENDATIONS OF THE AUXILIARY AND TERRITORIAL FORCES COMMITTEE AND THE INDIAN SANDHURST COMMITTEE.**

**29. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** What steps do the Government propose to take to give effect to the recommendations of :

- (a) The Territorial and Auxiliary Forces Committee; and
- (b) The Indian Sandhurst Committee?

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF :—**(a) The Honourable Member is referred to the Resolution on the subject published in the Gazette of India of 20th August.

(b) I am afraid the Honourable Member's question cannot be answered until final decisions have been reached on the recommendations of the Indian Sandhurst Committee.



PAY OF THE AGENT OF THE GOVERNMENT OF INDIA IN SOUTH AFRICA.

30. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : What pay is being given to the Agent General to the Government of India in South Africa ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : £2,500 per annum besides an annual sumptuary allowance of £500 and a motor car allowance of £200.

THE HONOURABLE MR. G. A. NATESAN : Is it a fact, Sir, that the motor allowance given to the Right Honourable Srinivasa Sastri does not cover even the pay of his chauffeur for a month ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : I have no information.

WITHDRAWAL OF COIN FROM CIRCULATION DURING THE LAST 20 YEARS.

31. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : How many different kinds of coins have been withdrawn from circulation during the last 20 years ? Has such withdrawal caused loss to the public or not, and what, if any, has been such loss in respect of each particular class of coin ?

THE HONOURABLE MR. A. F. L. BRAYNE : I am not quite clear what exactly the Honourable Member wants to know. If by "withdrawal" he means a declaration under section 15A. of the Indian Coinage Act that a certain coin ceases to be legal tender, Government have so far withdrawn the eight anna nickel piece only. No loss has been caused to the public as they can obtain full face value of the coins without limit of time at Currency Offices. The coins also continued to be received at treasuries at face value for a period of 12 months from the date of withdrawal and Government have not received any complaints in the matter.

In addition, the gold mohur ceased to be legal tender on the expiry of the Gold Mohur Act of 1918, and the sovereign was demonetised by the Currency Act, 1927. In the case of the gold mohur there is no loss to the public as it is still received at Government treasuries and Currency Offices at its full face value of Rs. 15. As regards sovereigns, they are now received by Government at their bullion value. 65 sovereigns were so received from the public since the passing of the Currency Act, 1927, and the total loss on these 65 coins was Rs. 2-0-11 only.

If, however, the Honourable Member is referring to coins withdrawn under sections 16, 17 and 18 of the Indian Coinage Act, the loss stated in Article 66 of the Resource Manual is incurred. The number of such coins is given in the annual reports of the Controller of the Currency, copies of which are available in the Library. It is not possible to calculate the actual amount of loss in these cases.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : What I wanted to know was how many kinds of different coins have been issued and how many have been recovered, so that the balance in the hands of the people must have been the loss ?

**THE HONOURABLE MR. A. F. L. BRAYNE:** I have tried to answer the Honourable Member's question so far as I have understood it, and if the Honourable Member will make his question clearer, I will endeavour to give him a more detailed reply.

**PURCHASE BY JAPANESE FIRMS OF COTTON MILLS IN BOMBAY.**

**32. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY:** Has the attention of the Government been drawn to the newspaper reports that several cotton mills in Bombay are being purchased by Japanese firms, and is there any foundation for such reports?

**THE HONOURABLE SIR GEOFFREY CORBETT:** Government have seen newspapers reports to this effect. but have no further information.

**ADMISSION OF INDIANS INTO RESTAURANTS AND DANCING HALLS IN EDINBURGH AND GLASGOW.**

**33. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY:** Is it a fact that some of the restaurants and dancing halls in Edinburgh and Glasgow refused to admit Indians? If so, on what grounds, and have the Government taken any steps to represent their disapproval to the proper authorities there, and what has been the effect thereof?

**THE HONOURABLE MR. H. G. HAIG:** The Secretary of State has informed the Government of India that the orders prohibiting the admission of Asiatics to certain places of public entertainment in Edinburgh were withdrawn by all the establishments concerned on the 20th June as a result of action taken by the city authorities.

Government have not seen any allegation about such restrictions in Glasgow.

**FEDERATION OF SOUTH AND EAST AFRICA.**

**34. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY:** Is it a fact that steps are being taken to form a federation of South and East Africa? If so, what steps are the Government taking to safeguard the interests of Indians residing in those places?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH:** The Honourable Member's attention is invited to the terms of reference of the Commission which His Majesty's Government have decided to appoint. A copy has been placed in the Library of the House for reference. From this he will observe that, while the Commission has been asked to investigate the possibility of federation as a means to securing more effective co-operation between the different Governments in Central and East Africa, no actual steps to form a federation are now contemplated. The stage for action to safeguard Indian interests in the areas coming within the purview of the Commission's enquiry will arise if and when any proposals which are likely to affect the interests of the resident Indian communities materialise. In this connection, I would invite the Honourable Member's attention to the definite assurance contained in the White Paper issued by His Majesty's Government on this subject that they adhere to the underlying principles of the 1923 White Paper, entitled "Indians in Kenya", in regard to the political rights and status of British Indians resident there.

**THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** Does not that declaration involve this implication that the Indian residents of other Colonies will also be subjected to the reservation of areas for various classes as prevails in Kenya ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** I have not understood it as such.

**PROVISION OF OSCILLATING FANS IN RAILWAY COMPARTMENTS.**

**35. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** Has the attention of the Government been drawn to the great inconvenience caused to passengers by the want of oscillating fans in railway trains which would distribute the breeze amongst all passengers travelling in a compartment ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** Government are not aware that inconvenience has been caused to passengers through the absence of oscillating fans in railway trains in place of the type now fitted. The desirability of fitting oscillating fans in compartments of railway coaches has been investigated by certain railway administrations, but, in view of the limited size of the compartments, it has not been considered that the additional cost and complication of this type of fan would be justified by the problematical advantage to be obtained by use in such confined quarters.

**QUALIFICATIONS OF INDIANS AS ROYAL ENGINEERS IN ENGLAND.**

**36. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :**

(a) Are Indians allowed to qualify themselves as Royal Engineers in England ?

(b) Are Royal Engineers of England allowed to compete in the Engineering Service examination recently introduced in India ?

(c) If Indians are not allowed to qualify themselves as Royal Engineers in England, why are these Royal Engineers of England allowed to compete for the Engineering Service examination in India ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** (a) No.

(b) No. Only persons of Indian domicile are allowed to compete at the examination.

(c) Royal Engineers are not permitted to appear at the competitive examination.

**STATUTORY COMMISSION ON REFORMS.**

**37. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** When is the next Reforms Commission going to be appointed, and what will be the terms of reference and personnel of such Commission ?

**THE HONOURABLE MR. H. G. HAIG :** Government are unable to make any statement on the subject.

**LOSS OF THE STEAMER "SHAHZADA" IN THE BAY OF BENGAL.**

**38. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** Has the attention of the Government been drawn to the sinking of a ship

named the *Shahzada* in the Bay of Bengal on Thursday, the 14th July 1927 ? If so, will the Government be pleased to state the cause and extent of the disaster and the persons, if any, responsible for it, and what steps do the Government propose to take against them and to help the poor relations of the victims of the disaster ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** The answer to the first part of the question is in the affirmative. A Court of Enquiry was appointed by the Government of Bengal under the Indian Merchant Shipping Act to make an investigation. The Court has reported that when the "*Shahzada*" left Calcutta on the 13th July 1927 she was in a fit and proper condition as regards hull, machinery, equipment, etc., and that the cause of the foundering of the vessel was water finding its way rapidly into the interior of the vessel, but what caused the water to enter is unknown. The Court have also held that the loss of the vessel was not due to the wrongful act or default of the Master or Chief Officer, or of any other person on board. Out of the ship's company of 71, 7 Europeans and 14 Indians lost their lives. The Court found that everything possible was done in the short time available before the ship foundered, and that all members of the crew who came to the surface were rescued. All four engineers appear to have been drowned in the engine-room, doing their duty to the last.

Messrs. Turner, Morrison and Company, the local agents of the vessel, have reported that the question of payment of compensation to the relatives of the Indian crew who lost their lives is being dealt with under the Indian Workmen's Compensation Act. As regards the Europeans who were drowned, the matter is receiving the consideration of the Home Board of the Asiatic Steam Navigation Company and will be decided by them. As the Board's decision in the matter will take some time, the local agents have arranged to continue the monthly allowance allotted to their families by the deceased prior to the disaster.

#### COMMUNAL RIOTS.

**39. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** Has the number of communal riots in India in 1927 been less than that in the corresponding period of the previous year ?

**THE HONOURABLE MR. H. G. HAIG :** It is difficult to base any comparison on the number of riots, as the term might cover a small incident resulting in a few injuries or a period of serious and prolonged disturbance. But I regret to say that communal riots in 1927 have been deplorably frequent.

#### ABSENCE OF ELEVATED PLATFORMS ON THE PARBATIPUR-SILIGURI SECTION OF THE EASTERN BENGAL RAILWAY.

**40. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** Has the attention of the Government been drawn to the great inconvenience caused to Railway passengers on the Parbatipur-Siliguri section of the Eastern Bengal Railway by the absence of elevated platforms ? If so, do the Government contemplate removing the grievance at an early date ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** The answer to the first part of the question is in the negative. The second part therefore does not

arise. I shall, however, be glad to send a copy of this question and answer to the Agent in order to draw his attention to the matter.

#### REDUCTION OF FARES FOR FIRST CLASS PASSENGERS ON THE EASTERN BENGAL RAILWAY.

41. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Has the attention of the Government been drawn to the reduction of the rate of fare for first class passengers only adopted from 1st August 1927 by the Eastern Bengal Railway, and why has the said reduction not been made in case of other class passengers also or in preference to first class passengers ?

THE HONOURABLE SIR GEOFFREY CORBETT : Government are aware that the Eastern Bengal Railway has reduced its first class fares from the 1st August 1927. This reduction has been introduced with the object of attracting a larger number of passengers to travel first class and thereby increasing the railway revenues. Reductions in other classes have not been made because there is not considered to be a prospect of increasing railway revenues thereby.

#### INTERMENT IN UNHEALTHY LOCALITIES IN BENGAL OF POLITICAL DETENUS.

42. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that persons detained under the Bengal Criminal Law Amendment Act, 1925, by the Government of Bengal are being interned in the unhealthiest parts of Bengal ? If so, why is it being done, and what are the places where they are being interned, and do the Government of India propose to interfere in the matter ?

THE HONOURABLE MR. H. G. HAIG : No, Sir. Every care is taken to avoid places which are known to be unhealthy.

#### ACQUISITION BY THE EASTERN BENGAL RAILWAY OF THE HOUSE OF THE LATE BABU BANKIM CHANDRA CHATTERJEE, THE GREAT BENGALI NOVELIST, AT KANTALPARA.

43. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that the house of the late Babu Bankim Chandra Chatterjee, the great novelist of Bengal, at Kantalpara, is being acquired by the Eastern Bengal Railway ? Has any protest been received from the people of Bengal ? If so, do the Government propose to put a stop to the acquisition ? If not, why not ?

THE HONOURABLE SIR GEOFFREY CORBETT : Government understand that in order to improve the entrance into the Naihati Goods Yard at the north end, the Agent of the Eastern Bengal Railway caused enquiries to be made whether the present owner of the late Bankim Chandra Chatterjee's house would be willing to part with a strip 20 feet wide and 185 feet long along the western side of the property. This strip includes an outhouse, a portion of the courtyard about 8 feet wide and a portion of two living rooms, one of which is not a part of the late author's portion of the joint house. The greater portion of the property is stated to be in ruins, the only parts in a fair state of repairs being the outer buildings on two sides. It was ascertained that the owner would agree to the acquisition of the complete property but not a portion of it, and the Land Acquisition Officer was thereupon instructed to pre-

pare an estimate of the cost of acquiring the whole property. It is understood that no notice of acquisition has yet been issued by the Collector upon the heirs of the late author.

Protests have been received from the people of Bengal. The Agent, Eastern Bengal Railway, will be instructed to reconsider his proposals for improving the entrance to the goods yard with a view to avoiding encroachment upon the late author's house.

REPORT OF THE MEDICAL OFFICER IN CHARGE OF THE INSEIN CENTRAL JAIL, BURMA, REGARDING STATE PRISONER JYOTISH CHANDRA GHOSH.

44. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that the medical officer in charge of the Insein Central Jail, Burma, has reported that the State prisoner, Jyotish Chandra Ghosh, should no longer be confined in custody inside a prison ? If so, on what grounds, and what steps are the Government taking on the report ?

THE HONOURABLE MR. H. G. HAIG : The answer to the first part of the question is in the negative. The second part does not arise.

ISSUE OF £5,000,000 INDIAN TREASURY BILLS.

45. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that the Government are issuing an invitation for tenders for 5 millions sterling India bills ? If so, for what purpose and why were the tenders not asked for in India, and what are the terms of the loan ?

THE HONOURABLE MR. A. F. L. BRAYNE : Tenders to the extent of £5,000,000 six months India Treasury Bills were issued on 26th July for payment on 29th July. The average discount rate of accepted tenders was £4/9/9 per cent. The bills were required to meet the immediate needs of the Secretary of State for expenditure in England. Since then tenders for 4 crores of Rupee Treasury Bills have been called for and accepted in India.

REVISION OF THE PAY OF THE INDIAN CLERKS OF THE AUDIT OFFICE OF THE EASTERN BENGAL RAILWAY.

46. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that the Indian clerks of the Audit Office of the Eastern Bengal Railway preferred an appeal to the Auditor General through the proper channel for a revision of the scale of their pay ? Was it sent up to him and what steps has he taken upon it ? If the appeal was not sent to him, why was it not sent up ?

THE HONOURABLE MR. A. F. L. BRAYNE : The reply to the first part of the question is in the affirmative and to the second in the negative. The memorials were withheld by the Accountant General, Railways, under the memorial rules, as no new facts or arguments were advanced by the memorialists in support of their prayers, which had not already been carefully considered and rejected by Government in 1923 and 1924.

INCONVENIENT TIMINGS OF THE TRAIN SERVICES ON THE MURSHIDABAD BRANCH OF THE EASTERN BENGAL RAILWAY.

47. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Has the attention of the Government been drawn to an article headed " Hardships of Passengers " appearing in the " *Forward* " newspaper of the 26th July

(b) Is it a fact that the said Jnanendra Kumar Mukherjee was promoted to Officiating Sub-Head from 3rd January 1925 on Rs. 100 and again promoted to Rs. 130 on and from 1st April 1926 and to Rs. 138 on and from 1st April 1927, on the ground of his work being very satisfactory, as remarked by the then Deputy Auditor, Mr. Choudhury ?

(c) Has he again been reverted to Officiating Class I on Rs. 80 per month ? If so, why and from when ?

THE HONOURABLE MR. A. F. L. BRAYNE : The information is being obtained and it will be sent to the Honourable Member in due course.

RETRENCHMENTS OF EUROPEANS, ANGLO-INDIANS AND INDIANS IN THE LOCO. DEPARTMENT, EASTERN BENGAL RAILWAY.

54. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :  
(a) How many, if any, Europeans, Anglo-Indians and Indians of the Eastern Bengal Railway Loco. Department have been thrown out of employment on account of the retrenchment policy of the Railway Board ?

(b) Is it a fact that the posts of two Producing Engineers and one Fuel Superintendent have been created ? If so, have Europeans been appointed to these posts and why has this been done ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) In 1925, 57 men were discharged from the Kanchrapara Locomotive Workshops and in 1926, six ; but it would not be accurate to say that the discharge was due to any retrenchment policy of the Railway Board. 52 of these men were no longer required owing to the closing down of the smithy and the remainder for various other reasons. Government have no information how many of them were Europeans, Anglo-Indians or Indians.

(b) Two Production Engineers and one Fuel Superintendent have been appointed all on 3 years' covenants. All three are Europeans. Indians of the necessary qualifications and experience are not yet available.

GRANT OF AN INCREMENT TO THE HEAD CLERK OF THE DISTRICT LOCO. OFFICE, DACCA.

55. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that the Head Clerk of the District Loco. Office, Dacca, applied for an increment and that the Agent offered to consider his case on condition that he should effect retrenchment in his office and work with reduced hands ?

THE HONOURABLE SIR GEOFFREY CORBETT : Government have no information. The matter is entirely in the Agent's discretion.

INCREMENT OF SENIOR CLERKS IN THE LOCO. OFFICE, KANCHRAPARA.

56. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that many senior clerks in the Loco. Office, Kanchrapara, have not got any increment for the last 5 years or more ? If so, how many and why ?

THE HONOURABLE SIR GEOFFREY CORBETT : Government have no information. The grant of increments to clerks rests with the officers under whom they are serving.

**LONG HOURS OF WORK OF CLERKS TRANSFERRED FROM THE LOCO. OFFICE TO THE AGENT. STATISTICS.**

57. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that the clerks transferred from the Loco. Office to the Agent, Statistics, are forced to work very late hours and attend office on all Government holidays and on Sundays without any remuneration, though other clerks in Calcutta Railway offices are getting allowances for the same ?

THE HONOURABLE SIR GEOFFREY CORBETT : Government have no information. The matter is one for the Agent of the Railway.

**GRANT OF FREE MEDICAL ATTENDANCE TO THE EUROPEAN JUDGES OF HIGH COURTS.**

58. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that rules have been promulgated to allow free medical attendance to European, but not to Indian, High Court Judges ? If so, why and by whom have such rules been promulgated and what are these rules ?

THE HONOURABLE MR. H. G. HAIG : Free medical attendance is a privilege which all Government officers have for long enjoyed. There is therefore no question of promulgating any such rules as those referred to by the Honourable Member.

**SUPPLY OF FREE MEDICINES TO EUROPEAN OFFICIALS OF STATE RAILWAYS.**

59. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact that rules have been promulgated by which European officials, but not Indians, in the State Railway administrations will not have to pay the price of medicine when they go to the railway hospitals for treatment ? If so, why and by whom have these rules been promulgated, and what are these rules ?

THE HONOURABLE SIR GEOFFREY CORBETT : The reply to the first part of the question is in the negative. The second part does not arise.

**ALLEGED ASSAULT BY EUROPEANS ON AN INDIAN CIVILIAN AT RAJSHAHI.**

60. THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Is it a fact, as reported in the *Forward* newspaper of the 6th August 1927, that an Indian Civilian had been assaulted by several Europeans at Rajshahi ? If so, who is this Civilian, and why was he assaulted, and what steps have been taken to punish the assailants ?

THE HONOURABLE MR. H. G. HAIG : Government have received no information on the subject.

**ADOPTION OF A UNIFORM AND SIMPLER FORM OF BILL OF LADING BY STEAMER LINES.**

61. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state what steps they have so far taken for the adoption of a uniform and simpler form of Bill of Lading by the steamer lines in view of the Indian Carriage of Goods by Sea Act of 1925 ?

(b) Is it a fact that shipping companies have still kept in use the old form and have overcome the difficulty of complying with the Act



by a "clause paramount" stamped across the form? And that the shippers have still to ship their goods under the old form of Bill of Lading?

(c) Is it a fact that the British Federation of Traders' Association have written on this question to the Calcutta U. K. Conference, which represent the shipping interests in Eastern Waters, and that they have been informed by the Conference of their inability to adopt a simpler and more intelligible form?

(d) If so, will Government be pleased to state whether they intend moving the Calcutta U. K. Conference to alter the present form so as to make it a uniform, simple and intelligible document?

THE HONOURABLE SIR GEOFFREY CORBETT: The answer to parts (b) and (c) of the question is in the affirmative.

As regards parts (a) and (d), the Carriage of Goods by Sea Act, 1925, does not require that there should be a uniform form of Bill of Lading. Section 4 of the Act only provides that a Bill of Lading shall contain an express statement that it is to have effect subject to the provisions of the Rules in the Schedule as applied by the Act; and the "clause paramount" stamped across Bills of Lading fulfils the requirements of the law.

Recently, however, the Government have been asked by the Bombay Millowners' Association and by the Federation of Indian Chambers of Commerce to take steps which would lead to the adoption of a uniform Bill of Lading in the Eastern Trade. The Government are considering whether any action can usefully be taken by them.

#### APPOINTMENT OF AN INDIAN AS LEADER OF THE INDIAN DELEGATION TO THE NEXT SESSION OF THE LEAGUE OF NATIONS.

62. THE HONOURABLE SIR PHIROZE SETHNA: (a) Will Government be pleased to state why an Indian has again not been appointed leader of the Indian Delegation to the next session of the League of Nations, in spite of the Resolutions passed in the Council of State recommending such appointment?

(b) Is it a fact that Government recommended action in accordance with the Resolutions, but the Secretary of State overruled such recommendation?

THE HONOURABLE MR. S. R. DAS: The decision to appoint Lord Lytton as leader of the Delegation was reached after full consideration of all the relevant circumstances, including the resolution to which the Honourable Member refers.

#### APPOINTMENT OF INDIANS AS ASSESSORS ON THE STATUTORY COMMISSION ON REFORMS.

63. THE HONOURABLE SIR PHIROZE SETHNA: (a) Has the attention of Government been drawn to the statement made by Sir Tej Bahadur Sapru in the course of an interview he gave to the Associated Press, namely:—

"I have heard from sources, which I cannot disregard as unreliable, that a scheme of having Indians as assessors (to the Statutory Commission) is being seriously entertained in high quarters"?

(b) Will Government be pleased to state whether such a scheme is being contemplated either by themselves or by the Secretary of State, and has it

been represented to them that the scheme is being viewed with disfavour by Indian public opinion ?

THE HONOURABLE MR. H. G. HAIG : (a) Government have seen newspaper reports of the statement.

(b) Government are at present unable to make any announcement with regard to the composition of the Statutory Commission. They are aware that a suggestion of the nature referred to has appeared in the press and has been criticised in various quarters.

NUMBER OF INDIANS IN EACH OF THE ALL-INDIA SERVICES FOR THE YEARS 1920 TO 1927.

64. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to lay on the table a statement showing the number of Indians in each of the All-India Services for the years 1920, 1921, 1922, 1923, 1924, 1925, 1926 and 1927 ?

(b) What is the proportion reached in 1927 in each of these services between Indian and European officers ?

THE HONOURABLE MR. H. G. HAIG : A statement containing the information required by the Honourable Member is laid on the table.

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**RESULTS OF THE LAST ELECTIONS TO THE LEGISLATIVE ASSEMBLY.**

**65. THE HONOURABLE SIR PHIROZE SETHNA :** Will Government be pleased to lay on the table a statement showing—

- (a) the name of each constituency of the Legislative Assembly ;
- (b) the number of voters registered on the electoral roll of each constituency ;
- (c) the names of candidates who offered themselves for election to the Legislative Assembly in each constituency at the last election ;
- (d) the name of the political party, if any, to which each candidate declared himself to belong ;
- (e) the number of votes polled by each ; and
- (f) the percentage of the voters who voted in each constituency to the total number of voters in each such constituency ?

**THE HONOURABLE MR. H. G. HAIG :** The Honourable Member is referred to the report on the results of the 1926 elections, a copy of which is in the Library. Information as regards part (c) is available only in the case of Madras, and that relating to (d) is not available.

**REPORTS FROM PROVINCIAL GOVERNMENTS REGARDING THE GROWTH OF EDUCATION AND THE DEVELOPMENT OF REPRESENTATIVE INSTITUTIONS.**

**66. THE HONOURABLE SIR PHIROZE SETHNA :** (a) Will Government be pleased to state whether, in view of the near appointment of the Statutory Commission and the matters which it will have to inquire into, they have called from Provincial Governments for reports on—

- (1) the growth of education ;
- (2) the development of representative institutions ; and
- (3) matters connected with (1) and (2), since the adoption of the reformed constitution ?

(b) If not, do they intend to call for such reports ?

**THE HONOURABLE MR. H. G. HAIG :** (a) The Government of India are engaged in the preparation of memoranda on the subjects to which the Honourable Member refers. For this purpose they possess considerable material received from Local Governments. In the case of education it is the practice to issue quinquennially all-India reviews of the progress of education based on information specially supplied by Provincial Governments. The next review is due to issue in 1928.

(b) It is not intended at present to refer to Local Governments unless the available information is found to be inadequate.

**VIEWS OF THE HOME GOVERNMENT ON THE FINDINGS OF THE INDIAN AUXILIARY AND TERRITORIAL FORCES COMMITTEE.**

**\* 67. THE HONOURABLE SIR PHIROZE SETHNA :** (a) Has the attention of Government been drawn to the reply given in the House of Commons by the Under Secretary of State on July 29th that the views of the Home Government on the findings of the Auxiliary and Territorial Forces Committee have been communicated to the Government of India ?

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\* For answer to this question, see answer to Question No. 8.

(b) When were those views received by the Government of India ?

(c) When will the decision of the Government be made public ?

#### PROPOSED INDIA HOUSE IN LONDON.

68. THE HONOURABLE SIR PHIROZE SETHNA :

(a) Has the lease for the site for the India House to be erected in London been completed ?

(b) What is the period of lease and the annual rent ?

(c) Will Government be pleased to lay the plans of the India House on the table ?

(d) Are any features of Indian Architecture to be introduced in the building ?

(e) How soon is the building likely to be completed ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) The Government have had no intimation yet from the High Commissioner of the completion of the lease.

(b) The lease would be for 999 years and the ultimate rent of the site £6,000 per annum. For the first 12 months from the commencement of the lease there would be a paper corn rent and the rent for the second and third years would be half the ultimate rent.

(c) The final plans have not yet been received, but when they are received, I shall be very glad to show them to the Honourable Member and to any other Honourable Members who may be interested.

(d) The London County Council requires that the exterior should be in harmony with the neighbouring buildings, and apart from small decorative features it will not be possible to make it representative of any Indian style. The Architect, however, is endeavouring to give the interior a marked Indian character. It is also proposed to decorate the main hall with frescoes painted by Indian artists and, if funds permit, the dome also and the ceilings of the important rooms. Indian timber will be used, so far as possible, for panelling, flooring and furniture. Indian marble will also be used, and will be worked in India before shipment to England. During the past few months the High Commissioner and the Architect have been assisted by an Advisory Committee of members of the Indian Legislature in England, and I understand that this Committee has examined and approved all the plans and has given much valuable advice.

(e) It is not anticipated that the building will be completed before 1930, but it is hoped to have it ready for occupation in 1929.

THE HONOURABLE SIR PHIROZE SETHNA : Will the rent of £6,000 per annum be uniform after the third year, as I understand the Honourable Member to say ?

THE HONOURABLE SIR GEOFFREY CORBETT : Yes, Sir.

THE HONOURABLE SIR PHIROZE SETHNA : Will the building just suffice for the offices of the High Commissioner and the Trade Commis-

sioner, or will there be any portion available for letting to the public? And if the latter, will it be let in preference to Indian businesses and Indian firms?

THE HONOURABLE SIR GEOFFREY CORBETT: I do not expect that any portion of it will be available for letting out; it will be fully occupied by the High Commissioner and the Indian Trade Commissioner and their staffs.

PURCHASE OF PAINTS AND DRY COLOURS BY THE EAST INDIAN RAILWAY.

69. THE HONOURABLE SIR PHIROZE SETHNA: (a) Has the attention of Government been drawn to a letter, published in the issue of *Forward* of June 25th, 1927, wherein it is stated that, in spite of much lower quotations by Indian manufacturers, the East Indian Railway has accepted tenders of European manufacturers and importers in respect of paints and dry colours at about 50% higher rates?

(b) Has any action been taken by Government in regard thereto and, if so, what?

(c) Is it a fact that the paints and dry colours required have to be in accordance with the Indian Stores Department specification?

(d) Have Indian manufacturers supplied to the same Railway such paints and dry colours under the condition mentioned in (c), and is it a fact that the Railway has had no cause for complaint in regard to such goods supplied by them?

(e) Is it a fact that the Indian Stores Department purchase such paints and dry colours almost exclusively from Indian manufacturers and that the goods tendered are, as a rule, approved of and passed by their Controller of Inspection?

(f) Is it also a fact that the Army Department purchase paints and dry colours almost exclusively from Indian manufacturers?

THE HONOURABLE SIR GEOFFREY CORBETT: (a) and (b). Government have seen the letter mentioned. They obtained a report from the Agent of the East Indian Railway, and the Financial Commissioner, Railways, also looked into the matter during a recent visit to Calcutta. It was found that the Tender Committee of the East Indian Railway rejected the lowest tender for lamp black, Prussian blue, ultramarine blue, Venetian red and bath enamel green because the firm tendering was not on the list of the Indian Stores Department as a supplier of paints, and in accordance with the recognised procedure, their tender was in consequence not considered. The tenders of another firm, which were lower than those accepted, were also rejected because it had recently been found necessary to reject supplies from this firm. The lowest tender for white lead was also rejected because the firm was not known to the East Indian Railway Administration or to the Controller of Purchases of the Indian Stores Department.

(c) Paints and dry colours are required to be in accordance with the Indian Stores Department specification or the specifications in force on the ordering railways which are generally very similar.

(d) Indian firms have supplied such paints and dry colours and in many cases there has been no cause for complaint.

(e) I understand that practically all the paints and dry colours, for which contracts have been placed by the Indian Stores Department for supply during the current financial year, are of Indian manufacture.

(f) Yes.

**TESTING OF THE SUPPLIES OF PAINTS TENDERED BY EUROPEAN MANUFACTURERS TO THE EAST INDIAN RAILWAY AT THE GOVERNMENT TEST HOUSE AT ALIPORE.**

70. THE HONOURABLE SIR PHIROZE SETHNA: Have the supplies of paints tendered by European manufacturers to the East Indian Railway, referred to in the issue of *Forward* of 25th June, 1927, been tested at the Government Test House at Alipore?

THE HONOURABLE SIR GEOFFREY CORBETT: Three items have been tested at Alipore. The other three were for very small quantities and the cost of testing was not considered justifiable.

THE HONOURABLE SIR PHIROZE SETHNA: What was the result in the case of the three that were tested?

THE HONOURABLE SIR GEOFFREY CORBETT: I am afraid I cannot say without notice.

**PURCHASE OF STORES FOR GOVERNMENT RAILWAYS THROUGH THE INDIAN STORES DEPARTMENT.**

71. THE HONOURABLE SIR PHIROZE SETHNA: Is there any reason why Government Railways do not make use of the Indian Stores Department by purchasing through it as much as possible of their requirements?

THE HONOURABLE SIR GEOFFREY CORBETT: Government railways do make use of the Indian Stores Department for the purchase of a considerable portion of their requirements. I would refer the Honourable Member to the speech made by the Honourable Sir Charles Innes, in the Legislative Assembly, on 24th February last, in which the policy of the Government with regard to purchase of material for railways by the Indian Stores Department is described. In the year 1926-27, the purchases for State-owned railways through the Indian Stores Department amounted to about Rs. 75½ lakhs which is more than double the figure for the previous financial year.

**FIXING BY THE EAST INDIAN RAILWAY OF LUMP SUMS FOR DEPOSITS ON TENDERS FOR RS. 10,000 AND OVER.**

72. THE HONOURABLE SIR PHIROZE SETHNA: (a) Is it a fact that the East Indian Railway asks its tenderers, in case of tenders of Rs. 10,000 and over, to put in a deposit of 2 per cent. of their tendered amounts?

(b) Is it a fact that information regarding amounts of deposits is obtained by rival tenderers from the Railway Office?

(c) Do Government propose to instruct the Railway Company to fix lump sums for deposits on tenders which are for Rs. 10,000 and over?

THE HONOURABLE SIR GEOFFREY CORBETT: (a) Under the present rules, the East Indian Railway Administration asks for a deposit of Rs. 200 when the amount of the tender exceeds Rs. 5,000 and does not exceed

Rs. 10,000 ; and a further deposit of Rs. 100 for each additional Rs. 5,000 or portion of Rs. 5,000.

(b) and (c). The Railway administration have received no evidence that information regarding the amounts of deposits has been obtained by rival tenderers from the railway office, but they recognise the danger to which the Honourable Member has drawn attention and are reconsidering the matter. In doing so they propose to consider the suggestion put forward by the Honourable Member in part (c) of his question.

DELAYS IN PAYMENT TO FIRMS OF BILLS DUE TO THEM BY THE EAST INDIAN RAILWAY.

73. THE HONOURABLE SIR PHIROZE SETHNA : Have complaints been received from some Calcutta firms of the delay in receiving payment of their bills, or return of their earnest money and deposits in the case of unsuccessful tenderers from the East Indian Railway ?

THE HONOURABLE SIR GEOFFREY CORBETT : The Railway Board have received a copy of one letter from a firm in Calcutta to the Agent of the East Indian Railway complaining of delays in payment, and another firm also mentioned the matter to the Financial Commissioner of Railways when he was recently in Calcutta. The Financial Commissioner ascertained that delays were not general, but asked the Chief Accounts Officer of the East Indian Railway to examine the procedure and make such alterations as may be found to be needed to secure that payments are made as expeditiously as possible.

IMPROVEMENT IN THE ADMINISTRATION OF THE STORES DEPARTMENT OF THE EAST INDIAN RAILWAY.

74. THE HONOURABLE SIR PHIROZE SETHNA : Is the Railway Board satisfied with the present working of the Stores Department of the East Indian Railway ?

THE HONOURABLE SIR GEOFFREY CORBETT : The position is much better than it was two years ago, but is still not entirely satisfactory and special measures have been undertaken to effect further improvement.

RULE FOLLOWED BY THE EASTERN BENGAL RAILWAY IN REGARD TO THE PURCHASE OF PAINTS.

75. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government state what is the rule followed by the Eastern Bengal Railway in regard to the purchase of paints ?

(b) Is it a fact that tenders were invited by this Railway for the whole year for paints of the value of only about Rs. 60,000 ?

(c) Is it a fact :

(i) that quantities of the value of between one and a half to two lacs were purchased without any tenders from certain firms ;

(ii) that none of these firms was an Indian firm ; and

(iii) that manufacturers in India of these paints were not invited to quote their prices for the same ?



**THE HONOURABLE SIR GEOFFREY CORBETT:** (a) Purchases are made either by tender or by asking selected firms to quote prices. In the latter case the lowest price quoted is accepted provided it is not higher than the prevailing market price.

(b) Yes.

(c) (i) Paint to the value of about Rs. 75,000 has been purchased since January, 1927, from selected firms without a general call for tenders.

(ii) and (iii). One of the selected firms was an Indian firm.

#### PURCHASE OF PAINTS BY THE EASTERN BENGAL RAILWAY.

**76. THE HONOURABLE SIR PHIROZE SETHNA:** Will Government be pleased to state:

(a) Whether public tenders were invited by the Eastern Bengal Railway for the following items of paints:

Paint White Zinc Genuine Stiff and Ready Mixed;

Paint White Lead Genuine Stiff and Ready Mixed;

Paint Purple Brown to Eastern Bengal Railway Standard Shade Ready Mixed;

Paint White Enamel; and

Paint Red Lead Dry;

(b) If not, why not?

(c) (i) the names of the firms from whom the purchases were made;

(ii) the quantity and value of the above paints agreed to be purchased during the current year;

(iii) the stipulations made regarding the quality of these paints;

(d) whether any tests have been carried out at the Government Test House, Alipore, of such paints; and

(e) why such purchases were not made by the Eastern Bengal Railway either (1) by inviting public tenders, or (2) through the Indian Stores Department?

**THE HONOURABLE SIR GEOFFREY CORBETT:** (a) No.

(b) and (e). Because of the procedure followed by the Eastern Bengal Railway which I have described in answer to part (a) of question No. 75.

(c) (i) Messrs. Jessop and Company, Limited.

„ Plummer Brothers and Company.

„ Turner Morrison and Company.

„ Shalimar Paint, Colour and Varnish Works, Limited.

„ J. F. Madan and Company.

„ R. Ingham Clark and Company, Limited.

„ Hadfields, Limited.

(ii) 1,680 cwts. of paint and 485 gallons of enamel to the total value of over Rs. 78,000 have been purchased since January 1927.

(iii) The paints are required to be genuine.

(d) Samples of paints tendered are regularly sent to the Government Test House at Alipur, and only paints reported by the Test House as being genuine and satisfactory are accepted.

COMPLAINTS REGARDING PAINTS PURCHASED BY THE EASTERN BENGAL RAILWAY.

77. THE HONOURABLE SIR PHIROZE SETHNA : (a) Is it a fact that the Carriage and Wagons Department have made complaints in regard to some paints purchased by the Eastern Bengal Railway without inviting tenders and that the Stores Department have persisted in placing orders for the same paint with particular firms ?

(b) Is it a fact that some of these firms are not dealers in paints ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) No complaints have been received with regard to paints supplied during 1927, but complaints were received regarding the supply made by one firm during 1926, and the firm was not asked to quote for 1927 requirements.

(b) The answer is in the negative.

PROTECTION FOR THE LOCOMOTIVE AND WAGON INDUSTRIES.

78. THE HONOURABLE SIR PHIROZE SETHNA : (a) Have Government directed the Tariff Board to frame any recommendations on the question of protection for the locomotive and wagon industries ?

(b) If so, have the Tariff Board made a report on the subject, and will Government be pleased to lay a copy on the table ?

(c) If the answer to (a) is in the affirmative and the answer to the first part of (b) is in the negative, when do Government expect such a report from the Tariff Board ?

THE HONOURABLE SIR GEOFFREY CORBETT : The Tariff Board have submitted a report regarding the grant of protection to the manufacture of wagons and underframes under the terms of reference contained in the Government of India Resolution No. 260-T. (64), dated the 3rd April, 1926. The report is now under consideration and will be published as soon as possible. As regards locomotives, the Peninsular Locomotive Company, Limited, was the only company in India concerned with their manufacture. As this company has recently been acquired by Government it has become unnecessary for the Board to consider the question of granting protection to the locomotive industry.

ISSUE OF £5,000,000 INDIAN TREASURY BILLS.

79. THE HONOURABLE SIR PHIROZE SETHNA : Will Government be pleased to state :—

(i) when they gave instructions for the issue of £5,000,000 Indian Treasury Bills ; and

(ii) for what rates were they issued, with the names of the parties to whom they were issued, and in what amounts ?

THE HONOURABLE MR. A. C. McWATTERS : (i) Under section 28 (1) of the Government of India Act, tenders for Sterling Treasury Bills for £5

million were called for by the Secretary of State in Council on the 22nd July 1927 for payment on the 29th.

(ii) The average discount rate of accepted tenders was £4-9-9.3d. per cent. Information regarding the names of parties and the amounts allotted to them is not available.

#### SALE OF SILVER HELD IN THE UNITED KINGDOM ON ACCOUNT OF THE PAPER CURRENCY RESERVE.

80. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state when they gave orders for the sale of silver which was held in the United Kingdom on account of the paper currency reserve ?

(b) How much has been sold and at what rates ?

(c) Which firm or firms of bullion dealers were employed by Government for the sale of this silver ?

THE HONOURABLE MR. A. C. MCWATTERS : The Government of India sold in July 1927 silver bullion amounting approximately to 9,200,000 fine ounces held in the Paper Currency Reserve in India. They regret they cannot give any further information.

#### NUMBER OF MEN IN RECEIPT OF OVER RS. 500 A MONTH IN THE TELEGRAPH WORKSHOPS IN CALCUTTA.

81. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state how many men are receiving more than Rs. 500 a month in the telegraph workshops in Calcutta ?

(b) How many men are Indians by descent, and how many are statutory Indians ?

(c) Are any steps taken to train Indians in this direction and, if so, what ?

THE HONOURABLE MR. A. C. MCWATTERS : (a) Nine, including officiating incumbents.

(b) Two are Indians by descent and two statutory Indians.

(c) The matter is now under consideration of Government, and I am not in a position to state what steps are likely to be taken in the matter.

#### RECRUITMENT OF INDIANS FOR LOCO. AND WORKSHOP POSTS ON STATE RAILWAYS.

82. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state whether orders have been given by them for the recruitment of Indians for Loco. and Workshop posts in State Railways in accordance with the percentage recommended by the Lee Commission ?

(b) How do actual recruitments during 1926-27 compare with the percentage recommended ?

(c) What do Government intend to do to expedite the rate of Indianisation in this direction ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) I would refer the Honourable Member to the Railway Department Resolution No. 2058-E., dated 15th July 1926, stating that the Government of India accepted the

recommendation of the Lee Commission that existing facilities should be pressed forward as expeditiously as possible in order that recruitment in India may be advanced as soon as practicable up to 75 per cent. of the total number of vacancies in the Railway Department as a whole. The regulations for recruitment for the Mechanical Engineering and Transportation (Power) Departments—i.e., for Locomotive and Workshop posts—on State-worked Railways were published as an annexure to that Resolution.

(b) Two appointments were made in 1926-27, one of which was an Indian. In addition 6 Indian apprentices have also been appointed.

(c) A scheme has been introduced whereby Indian apprentices will be recruited and trained in this country for appointment to the superior Mechanical, Engineering and Transportation (Power) Departments of State Railways.

#### SYSTEM OF RUPEE TENDER FOR THE PURCHASE OF GOVERNMENT STORES.

83. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state when it is proposed to adopt the system of rupee tender for purchases of all Government departments ?

(b) What is the progress made in this scheme and why has it been held up so long ?

THE HONOURABLE MR. A. C. MCWATTERS : (a) It is not possible to state exactly when the system of rupee tender for purchase of Government stores will come into force. The Honourable member may, however, rest assured that the system will be introduced at the earliest possible date.

(b) A Committee has for some time past been engaged in redrafting the Stores Rules so as to give effect to this change of policy. The matters under consideration are far from simple and disposal of them has necessarily taken some time.

THE HONOURABLE SIR PHIROZE SETHNA : A Departmental Committee, I suppose ?

THE HONOURABLE MR. A. C. MCWATTERS : Yes, Sir.

#### VALUE OF STORES PURCHASED BY THE RAILWAY DEPARTMENT THROUGH THE INDIAN STORES DEPARTMENT.

84. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state the value of stores purchased by the Railway Department of the Government through the Indian Stores Department during the last twelve months for which complete accounts are available ?

(b) What percentage does this form of the total purchases by the State Railways ?

(c) What steps have been taken to increase this percentage ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) The value of stores purchased for State-worked Railways by the Indian Stores Department in 1926-27 amounted to Rs. 70,23,000.

(b) 4.83 per cent. of the total purchases excluding the cost of such stores as coal, coke, stone, lime, ballast, etc.

(c) Agents of State-worked Railways have been instructed to make the fullest use of the Indian Stores Department as a purchasing agency in all

cases in which they consider that the Department's services can advantageously be utilised. During the last three years the purchases through that Department have grown from Rs. 45,86,000 to Rs. 70,23,000.

THE HONOURABLE SIR PHIROZE SETHNA : Have Government discovered that there are cases when the Agents could utilise the services of the Indian Stores Department and have not so utilised them ?

THE HONOURABLE SIR GEOFFREY CORBETT : I have no information, Sir.

#### BASIS OF CALCULATION OF THE ANTICIPATED RETURN ADOPTED BY THE RAILWAY BOARD IN SANCTIONING EXPENDITURE ON OPEN LINES.

85. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state the basis of calculation of the anticipated return adopted by the Railway Board in sanctioning capital expenditure on open lines ?

(b) Do they calculate what return will be secured on the new expenditure ?

(c) How is this calculation made with regard to extensions to workshops ?

(d) With reference to the statement in one of the papers, accompanying the railway budget last year, that expenditure on a particular workshop is calculated to give 8 per cent. return, will Government be pleased to lay on the table details of how this calculation was made ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) The basis is fully explained in the memorandum placed before the Standing Finance Committee for Railways in November 1925—*vide* pages 32 and 33 of Volume II, No. 4 of the Proceedings of the Committee.

(b) Yes.

(c) By applying the general principles enunciated in the memorandum referred to and by taking into account the important factors that come into play in connection with proposals for the extension of workshops.

(d) The Honourable Member refers, I think, to the scheme for remodelling the Kanchrapara workshops. The details of the anticipated economies which give a return of 8 per cent. on the estimated capital outlay involved are given in the Proceedings of the Standing Finance Committee for Railways of January 1926 (Volume II, No. 6, page 13).

#### NUMBER OF BRANCHES OPENED BY THE IMPERIAL BANK.

86. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state how many Branches the Imperial Bank have opened till now in accordance with arrangements undertaken by them ?

(b) What is the amount of funds which each Branch is allowed to keep free of interest, and are any maxima and minima fixed ?

(c) Have Government asked the Bank to open Branches in certain places and has the Bank refused ? If so, at which places ?

(d) What is the total increase in the number of Branches of all Banks in India other than the Imperial Bank since the Imperial Bank of India Act was passed ?

**THE HONOURABLE MR. A. C. McWATTERS :** (a) The attention of the Honourable Member is invited to paragraph 29 of the Report of the Controller of the Currency for 1926-27.

(b) There is no separate limit for individual branches. The Government keep all their balances free of interest with the Bank as a whole under the agreement.

(c) The answer to the first part is in the negative. The second part does not arise.

(d) The information is being collected and will be supplied to the Honourable Member.

**SAFEGUARDING OF THE INTERESTS OF INDIANS IN EAST AFRICA.**

**87. THE HONOURABLE SIR PHIROZE SETHNA :** What suggestions, if any, have Government received with regard to the appointment of an Agent or a Sub-Agent in East Africa for safeguarding the interests of Indian residents there and what negotiations with the East African Government have taken place on the subject ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** The Government of India have received no formal suggestion to appoint an agent in East Africa, but they themselves have considered the matter from time to time and do not propose to proceed further with it until experience has been gained of the appointment recently made by them in South Africa. No negotiations on the subject have taken place between the Government of India and the Kenya Government.

**PURCHASE FOR THE ARMY OF PLOT NO. 8 ON THE BACK BAY SCHEME.**

**88. THE HONOURABLE SIR PHIROZE SETHNA :** Will Government be pleased to state :—

- (a) whether the Development Department of Bombay have asked them to take over for the Army, Plot No. 8, which has been prepared for them on the Back Bay Scheme ;
- (b) if so, what are the difficulties pointed out by the Government of India in taking over this plot ;
- (c) when do Government expect to take it over ;
- (d) what is the amount which Government will pay and under which head in the Army estimates will this amount appear ; and
- (e) has this matter been placed before the Standing Finance Committee ?

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF :** (a) It has been agreed between the Government of India and the Government of Bombay that Plot No. 8 will be taken over as soon as it is ready.

(b) The Government of India have pointed out no difficulties.

(c) As soon as it is in a fit condition for use by the military authorities and properly levelled for purposes of surface drainage.

(d) The estimated amount is about Rs. 230 lakhs. The sum due to the Government of Bombay will be adjusted in that Government's loan account as a repayment of loans outstanding in the Provincial Loans Account, which is a civil head.

(e) No : transactions of this kind are not by custom placed before the Committee.

#### TAXATION OF THE IMPORTS OF JAPANESE TEXTILE GOODS INTO INDIA.

89. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state whether any representation has been received from His Majesty's Government by them with regard to the recommendation of the Indian Textile Board involving the proposal for taxing the imports of Japanese textile goods into India ?

(b) If so, will Government be pleased to lay a copy on the table or communicate to this House the gist of such representation and any reply which may have been given by the Government of India ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) N , Sir.

(b) Does not arise.

#### PURCHASE OF WAGONS AND LOCOMOTIVES.

90. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state whether they have received a letter from the Indian Merchants Chamber asking for particulars as to the purchase of wagons and locomotives during the last few years ?

(b) What is the date of this letter ?

(c) Has any reply been sent ? If so, will Government be pleased to place a copy on the table ?

(d) If no reply has been sent, will Government say when they propose to reply ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) Yes.

(b) 14th April, 1927.

(c) No reply has yet been sent.

(d) A report has recently been received from the Tariff Board in which the purchase of wagons by the Railway Board is discussed. A reply will be sent to the letter from the

12 NOON. Indian Merchants' Chamber, as soon as it is possible to publish the Board's Report.

#### VALUE OF BOOKS IMPORTED INTO INDIA.

91. THE HONOURABLE SIR PHIROZE SETHNA : Do the Customs authorities keep particulars of the value of books imported into India under classifications, such as :

- (i) school and college books,
- (ii) literary, scientific and other kinds, and
- (iii) novels ?

THE HONOURABLE MR. A. C. MCWATTERS : The answer is in the negative.

#### PROMOTION OF SUITABLE MUSLIMS FROM THE PROVINCIAL SERVICES TO THE ALL-INDIA SERVICES.

92. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (a) Will the Government be pleased to state the approximate period by which it

proposes to reach the proportions recommended by the Lee Commission in the All-India Services, by promotions from the Provincial Service ?

(b) Will the Government be pleased to state whether it considered the expediency of appointing suitable Muslims in the All-India Services, by promotions from the Provincial Services, if for any reasons the number of Muslims appearing in and passing the simultaneous competitive examinations held in India and England be not up to the mark in any of the Provinces ?

THE HONOURABLE MR. H. G. HAIG : (a) In the Indian Service of Engineers the system of allotting 20 per cent. of the recruitment to officers promoted from the Provincial Service, as recommended by the Lee Commission, has been introduced. In the Indian Forest Service no definite proportion of recruitment by promotion was recommended, but steps are being taken to increase the number of such promotions on a systematic basis. In regard to the Indian Civil Service and Indian Police Service the accepted system is to make promotions to what are usually called listed posts and the principles to govern the rate of increase in the number of listed posts up to the proportion recommended by the Lee Commission are at the moment under careful consideration.

(b) As I informed the Honourable Member on the 5th March last in reply to part (iv) of his question No. 116, efficiency is the guiding principle in making promotions from a Provincial to an all-India Service. The representation of minority communities is secured by the reservation of vacancies for direct recruitment, and Government will not be prepared to give weight to communal considerations when it is a question of making promotions.

#### REPORT OF THE INDIAN SANDHURST COMMITTEE.

93. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (a) Do the Government propose to publish the full unanimous report of the Indian Sandhurst Committee ?

(b) Do the Government of India propose to give immediate effect to the recommendations made in the said Report ?

(c) If so, will the Government be pleased to state what steps have been taken in this direction ?

(d) Has the attention of the Government been drawn to the minutes of the proceedings of the public meeting, on this subject, held in Bombay on the 5th of August, 1927, which was published in the papers ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) The Government published the Committee's report at the beginning of April 1927.

(b) and (c). No statement of policy can be made and no action can be taken in connexion with the report at the present stage.

(d) Government have seen reports of the meeting.

#### RECOMMENDATIONS OF THE INDIAN TAXATION ENQUIRY COMMITTEE.

94. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (a) Will the Government be pleased to state the reasons for delaying in giving effect to the recommendations of the Indian Taxation Enquiry Committee ?



(b) Will the Government be pleased to state what steps, if any, have been taken to expedite the matter ?

THE HONOURABLE MR. A. C. MCWATTERS : (a). (1) The Government of India are not directly concerned with most of the recommendations relating to local taxation and the financial relations between local authorities and Provincial Governments. In July 1926, Provincial Governments were requested to consider these recommendations and to inform the Government of India in due course what action they proposed to take thereon. Reports from five of the Provinces are still due and one of them has stated in reply to a reminder that the report is under detailed discussion by the Departments concerned and that it is impossible to promise an early reply.

(2) On most of the recommendations relating to Provincial taxation, the Government of India have come to provisional conclusions and have requested Provincial Governments to indicate to them their views or decisions in due course. Several of the Provincial Governments have sent their replies. The others have been reminded periodically.

(3) In respect of central taxation, the recommendations of the Committee have been receiving the close attention of the Government, who have come to definite conclusions on most of the points. As the Honourable Member is aware, effect has been given to some of the recommendations in the Budgets of 1926-27 and 1927-28. The cotton excise duty and the export duty on tea have been abolished and the import duty on motor cars and tyres has been reduced. The proposal to abolish the export duty on hides was rejected in another place. The question of readjustments in the Meston Settlement was discussed at the Conference of Financial Representatives held in November 1926, and Provincial Governments will shortly be addressed on the detailed proposals.

(b) The Honourable Member will observe that the report is being dealt with expeditiously. The proposals, however, require detailed investigation, which cannot be completed within a short time, particularly as the great majority involve lengthy discussions with Provincial Governments. The majority of the proposals moreover do not call for immediate action, but rather suggest a policy to be pursued over a series of years.

#### PREVENTION OF SCURRILOUS ATTACKS ON THE RELIGION OF THE MUSSALMANS.

95. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (a) Has the attention of the Government been drawn to the resolutions passed at public meetings by Mussalmans all over India and in London, regarding the judgment in the *Rangila Rasul* case in the Punjab ?

(b) Will the Government be pleased to state what action they propose to take against such scurrilous attacks on the religion of the Mussalmans ?

(c) Will the Government be pleased to state if they propose to amend the present law, so as to cover cases like the *Rangila Rasul* ?

THE HONOURABLE MR. H. G. HAIG : (a) Government have seen the resolutions referred to.

(b) and (c). Government are introducing a Bill this session with the object of strengthening the law against insults to religion.

**THE HONOURABLE MR. M. SUHRAWARDY:** Sir, is it a fact that according to the recent judgment delivered by the Acting Chief Justice of the Punjab High Court, the Honourable Mr. Justice Broadway, the decision of the Honourable Mr. Justice Dalip Singh is an *obiter dictum* and it remains a dead letter in the Law Report now, inasmuch as the ruling of the Allahabad High Court is affirmed by Mr. Justice Broadway?

**THE HONOURABLE THE PRESIDENT:** That is a matter of opinion on which the Honourable Member cannot ask a question.

#### APPOINTMENT OF THE HONOURABLE SIR DINSHAW WACHA TO THE LIBRARY COMMITTEE.

**THE HONOURABLE THE PRESIDENT:** I have to announce to the Council that I have appointed the Honourable Sir Dinshaw Wacha to the Library Committee in the vacancy caused by the resignation of Mr. K. C. Roy from the Council.

#### CONGRATULATIONS TO MEMBERS WHO HAVE RECEIVED HONOURS.

**THE HONOURABLE THE PRESIDENT:** Honourable Members will expect me to take an early opportunity to refer to those of our colleagues who have received honours since we last met. I am sorry that the Honourable Sir Manmohandas Ramji is not here to-day, but he will no doubt read what I say, and I think we can assure him of the great pleasure afforded to us by the inclusion of his name in the list of new Knights created on the birthday of His Majesty the King Emperor, and I tender to him our sincere, and I am sure I may say our unanimous, congratulations.

The Honourable Sir Geoffrey Corbett's honour was conferred on him in respect of eminent public services rendered before he became a Member of this Council. Nevertheless that does not diminish our pleasure in the Knighthood which he has received, and in congratulating him on it we venture to share collectively in the honour which has been conferred upon him individually.

**THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary):** Sir, I am very grateful to you for the kind words you have spoken and for the way in which they have been received by this House. I will only say that it will always be a happy memory that I received this honour for work done under the leadership of the Leader of this House and in the company of another Honourable Member.

#### BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

**SECRETARY OF THE COUNCIL:** Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table copies of a Bill to amend the Indian Bar Councils Act, 1926, for certain purposes, a Bill further to amend the Indian Merchant Shipping Act, 1923, a Bill to repeal and amend certain provisions of the Indian Criminal Law Amendment Act, 1908, and the Code of Criminal Procedure, 1898, a Bill further to amend the Indian Divorce Act for

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a certain purpose, and of a Bill to repeal certain enactments, which Bills were passed by the Legislative Assembly at its meetings held on the 18th, 22nd and 24th August, 1927.

## REPORTS OF THE JOINT COMMITTEES ON THE GOLD STANDARD AND RESERVE BANK OF INDIA BILL AND THE IMPERIAL BANK OF INDIA (AMENDMENT) BILL LAID ON THE TABLE.

SECRETARY OF THE COUNCIL: Sir, I lay on the table the reports of the Joint Committees on the Bill to establish a gold standard currency for British India, and constitute a Reserve Bank of India and on the Bill further to amend the Imperial Bank of India Act, 1920, for certain purposes.

## GOVERNOR GENERAL'S ASSENT TO BILLS.

SECRETARY OF THE COUNCIL: Sir, information has been received that His Excellency the Governor General has been pleased to grant his assent to the following Bills:

- The Indian Limitation (Amendment) Act, 1927.
- The Indian Registration (Amendment) Act, 1927.
- The Steel Industry (Protection) Act, 1927.
- The Currency Act, 1927.
- The Indian Finance Act, 1927.
- The Indian Limitation (Second Amendment) Act, 1927.
- The Sea Customs (Amendment) Act, 1927.
- The Provident Funds (Amendment) Act, 1927.
- The Madras Salt (Amendment) Act, 1927.
- The Repealing and Amending Act, 1927.

## INDIAN LIGHTHOUSE BILL.

### PRESENTATION OF THE REPORT OF THE JOINT COMMITTEE.

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary): Sir, I beg to present the Report of the Joint Committee on the Bill to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India.

## INDIAN SUCCESSION (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move for leave to introduce a Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874.

This Bill deals with sections 223 and 236 of the Succession Act, 1925. Under those sections probate or letters of administration cannot be granted to a married woman if the deceased was a Christian without the consent of her husband. This rule was based on the old English law, as it stood at the time

these sections were originally enacted in the Act of 1865. Since then the English law has been considerably changed and at the present moment in England it is not necessary that a married woman should have the consent of her husband. The Bill proposes to bring the law here into conformity with the law in England. The amendment of the Married Women's Property Act proposed by clause 3 of the Bill is also with a view to bring the Indian law into conformity with the present English law.

Sir, I move.

The motion was adopted.

THE HONOURABLE MR. S. R. DAS : Sir, I introduce the Bill.

### INDIAN LIMITATION (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member) : Sir, I move for leave to introduce a Bill further to amend the Indian Limitation Act, 1908.

This Bill is introduced in pursuance of certain recommendations of the Civil Justice Committee and it deals with section 10 and articles 133 and 134 of the Limitation Act. Section 10, as Honourable Members are probably aware provides that no suit for certain purposes against a trustee of a specific trust is barred by limitation by any length of time. The Privy Council have decided that this section does not apply to managers of Hindu or Muhammadan endowments and the object of the Bill is to make the section applicable to such endowments. As to the two articles, 133 and 134, there has been a conflict of decision as to when the period of limitation begins under section 134 and the Bill proposes to set that conflict at rest. The Bill also proposes to reduce the period of limitation under article 133 to three years ; (it is 12 years now)—the reason for that being that it deals with moveable properties and not immoveable properties. The Bill also is intended to make it clear that these two articles, 133 and 134, apply to Hindu and Muhammadan endowments.

Sir, I move.

The motion was adopted.

THE HONOURABLE MR. S. R. DAS : Sir, I introduce the Bill.

### ASSAM LABOUR AND EMIGRATION (AMENDMENT) BILL.

THE HONOURABLE MR. A. C. McWATTERS (Industries and Labour Secretary) : Sir, I move for leave to introduce a Bill further to amend the Assam Labour and Emigration Act, 1901, for certain purposes.

At this stage, Sir, I need not say more than a few words about this Bill which is of a purely formal character. Its object is simply to regularise the collection of cesses from employers under the Assam Labour and Emigration Act for the purposes of the Assam Labour Board. Owing to the somewhat peculiar wording of the Act of 1901, some doubt has been thrown on whether these cesses are being legally collected or not. They have in fact been collected ever since 1915. That is the sole object of the Bill.

Sir, I move.

The motion was adopted.

THE HONOURABLE MR. A. C. McWATTERS : Sir, I introduce the Bill.

## BODIES CORPORATE (JOINT OWNERSHIP) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move for leave to introduce a Bill to enable bodies corporate to hold property in joint ownership.

This Bill is introduced with a view to remove a defect in the law. Under the Indian Securities Act, 1920, when a Government security is held by two persons, it is provided that, on the death of one, the survivor becomes entitled to it. But a difficulty has arisen, when a Government security is held by an individual and a corporate body or by two corporate bodies, as to what happens if there is dissolution of one of the corporate bodies; because the question has arisen whether dissolution of a corporate body really amounts to death. The Bill is intended to make that clear and, following the English Act on the subject—the English Bodies Corporate (Joint Tenancy) Act, 1899—it is proposed now to enact that not only securities but properties may be held by two corporate bodies or by an individual and a corporate body, in which case on the dissolution of the corporate body, the survivor, the other joint owner, would be entitled to the whole of that property or security.

Sir, I move.

The motion was adopted.

THE HONOURABLE MR. S. R. DAS: Sir, I introduce the Bill.

## PRESIDENCY-TOWNS INSOLVENCY (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move for leave to introduce a Bill further to amend the Presidency-towns Insolvency Act, 1909, for certain purposes.

The object of this Bill is set out very fully in the Statement of Objects and Reasons and I do not propose to take up the time of the House at this stage. I may mention that the real object of the Bill is to make clear a conflict of practice which has arisen between the different High Courts under section 7 of the Presidency-towns Insolvency Act, and section 36 of that Act.

The motion was adopted.

THE HONOURABLE MR. S. R. DAS: Sir, I introduce the Bill.

## INDIAN DIVORCE (SECOND AMENDMENT) BILL.

THE HONOURABLE MR. H. G. HAIG (Home Secretary): Sir, I move for leave to introduce a Bill further to amend the Indian Divorce Act, for a certain purpose.

This is a small Bill which is intended to remedy a certain anomaly which has recently come to light. Under the Indian Christian Marriage Act, a valid marriage can be contracted between a Christian and a non-Christian; but under the provisions of the Indian Divorce Act, as it stands at present, relief can be given only where a petitioner professes the Christian religion. The object of this Bill is to put the non-Christian party to such a marriage on

exactly the same terms as the Christian party and to enable the non-Christian party also to apply for relief.

Sir, I move.

The motion was adopted.

THE HONOURABLE MR. H. G. HAIG : Sir, I introduce the Bill.

### INSOLVENCY (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member) : Sir, I move that the Bill further to amend the Presidency-towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

The object of this Bill is to prevent a debtor from repeatedly filing an application for adjudication without really any intention of proceeding with that application. What happens now is that a debtor who desires to prevent his creditors from suing him files his application for adjudication and thereafter takes no further proceedings under that, and finally his application is dismissed by the Court. If he gets into trouble again he promptly files another application, holds up his creditors and waits till the application is again dismissed. There have been cases where a debtor has followed this course more than three or four times, and the object of the Bill is to prevent a debtor from taking advantage of the present state of the law.

Clause 2 of the Bill provides that a debtor, in respect of whom an order of adjudication, whether made under this Act or under the Provincial Insolvency Act, has been annulled owing to his failure to apply or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made.

Clause 3 deals with the case where a debtor in his second application fails to refer to the fact that his previous application had been dismissed for default and the Court grants a second or a subsequent application in ignorance of the fact that a previous application had been dismissed for default. It provides that the Court may of its own motion annul any adjudication made on the petition of a debtor who was, by reason of the provisions of sub-section (2) of section 14, not entitled to present such petition.

Clauses 4 and 5 of this Bill are intended to amend the Provincial Insolvency Act on the same lines.

Sir, I move.

The motion was adopted.

Clauses 2, 3, 4 and 5 were added to the Bill.

Clause 1 was added to the Bill.

[Mr. S. R. Das.]

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

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#### STATEMENT OF BUSINESS.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House) : Sir, the List of Business for to-morrow is already in the hands of Honourable Members. Thereafter I understand that you will fix our next meeting for Friday in this week. On that day motions will be made to consider and pass the Lighthouse Bill, on which the Joint Committee's report was presented this morning, the Repealing Bill which was laid on the table to-day, and the Indian Succession Bill, the Indian Limitation Bill, the Bodies Corporate Bill and the Presidency-towns Insolvency Bill which were introduced to-day. The remaining official Bills introduced or laid on the table to-day will be proceeded with on Tuesday, the 6th September.

The Council then adjourned till Eleven of the Clock on Wednesday, the 31st August, 1927.







## COUNCIL OF STATE.

*Wednesday, 31st August, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### RESOLUTION *RE* ESTABLISHMENT OF A SUPREME COURT.

THE HONOURABLE SIR SANKARAN NAIR (Madras : Non-Muhammadan) : I beg to move :—

“ This Council recommends to the Governor General in Council to take early steps to secure that a Supreme Court is established in India with power—

- (a) to interpret and uphold the constitution ;
- (b) to act as a court of final criminal appeal against all sentences of death ;
- (c) to act as a revising court in specified serious cases ;
- (d) to hear civil appeals now heard by His Majesty's Privy Council ; and
- (g) generally to carry out the work at present entrusted to His Majesty's Privy Council ;

provided that such court shall not affect His Majesty's prerogative safeguarded in the constitutions of Canada, Australia and South Africa.”

Let me say at once before proceeding further that under this Resolution it is not intended to affect any of the existing powers or privileges of the Privy Council, that is to say, that a litigant may appeal to the Privy Council if he likes, or, if this Supreme Court is established, he may appeal to the Supreme Court. But once he appeals to the Privy Council he cannot go to the Supreme Court, and if he carries his litigation to the Supreme Court he cannot appeal to the Privy Council. He can go either to the one or to the other, but he cannot go to both. That is in order to show that the existing jurisdiction of the Privy Council is in no way intended to be interfered with.

Now, Sir, I come to the Resolution itself. Perhaps Honourable Members know that according to our law it is open to a litigant to appeal to the Privy Council in a certain class of civil cases ; that is to say, if the subject-matter is above Rs. 10,000 and if there is a difference of opinion between the first Court—the subordinate Court or the District Court—and the High Court and the High Court reverses the judgment of the subordinate Court or the District Court, then he is entitled to appeal to the Privy Council. The law recognises the fact that judgments where the High Court interferes with the judgment of the lower Court are judgments which may require further consideration, and it is for that further consideration that an appeal is provided for to the Privy Council. It is obvious, then, that when such an appeal is provided for to a higher court that should not be an illusory remedy. We must provide facilities for the litigant to appeal to a higher court. But what is the case now ? In by far the majority of cases when a litigant is entitled to go to the Privy Council, the man who has lost his appeal in the High Court, even when he is advised to go

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to the Privy Council, very often finds he cannot go to the Privy Council, because it is at such a distance and the cost is so very heavy that he cannot go there. First of all, when he applies for leave, he finds that he has to pay security for the costs of the other side in the Privy Council which comes to thousands of rupees. Then he finds that he has to pay for the preparation of the record for the Privy Council, because their Lordships in their wisdom say that they will not look into the papers printed in the lower Court; they must have papers specially printed for them. That also means thousands of rupees. And you know the lawyers in England. They are not like us. They want a large sum of money; you have to pay them heavily. Therefore, you find that many a litigant is deterred, and we know it for a fact that in many a case in which a litigant ought to appeal to the Privy Council he finds that he cannot go there and he has to submit to the judgment in India. That is the case when he has lost the case in the High Court. The poor man cannot go to the Privy Council. But it is worse when the appellant is a rich man who appeals to the Privy Council. The respondent, his opponent, who has won in India finds he cannot appear to defend the case in the Privy Council on account of his poverty and he must leave it to the appellant to go on with the case and the case is heard, as we say in courts of law, *ex parte*, i.e., with nobody to represent his side. The Privy Council have lamented over and over again that they have to hear the cases *ex parte*. The result is that he has got no advocate to present his case, and it may be that he loses it on that account. The Privy Council, therefore, is a Court which, I do not say, is intended to but is calculated to assist the rich as against the poor. Thus it assists the wealthy litigant as against the poor litigant. It keeps away the poor litigant from the final court of appeal and it assists the wealthy litigant to get the better of the poor litigant, to fight the poor litigant at a great advantage. That is one reason for the establishment of a supreme court. If we abolish the Privy Council altogether and say that in no case shall a litigant go to it, that will be something, because we shall be placing the wealthy and the poor litigant on the same footing. As things stand now, the rich litigant gets a distinct advantage over the poor litigant.

Now, Sir, I shall deal with another aspect of the case. I will now refer to a class of cases where a man is entitled to go to the Privy Council. I have told the Council already that when there is a difference of opinion between the High Court and the lower Court, then the litigant is entitled to go to the Privy Council. It is an extraordinary incident of the administration of criminal justice in India that even when a man is acquitted by the first Court after a full trial, the prosecutor, i.e., the Government, is entitled to appeal to the High Court and he may be convicted by the High Court, he may be sentenced to death. But when he is sentenced to death, that judgment is final. He cannot go to the Privy Council: in a civil case he could, but in a criminal case, when he is condemned to death, when he is sentenced to be hanged, the man has no right to go to the Privy Council. Their Lordships of the Privy Council say that they do not sit there as a court of criminal appeal, and they will not go into the evidence. That obviously is very unfair. I presume it requires no lengthy argument to show that in cases like that, the man who is sentenced to death ought to be entitled to go to a higher Court. If there was a higher Court in India, then he could go there and submit his final appeal. Again, when a man is convicted by a

majority of the Judges of the High Court he is not allowed to appeal to a higher Court. Very often when two Judges differ in appeal, it is placed before a third Judge. Then the man may be sentenced to be hanged, and even though there is difference of opinion among the High Court Judges, the man cannot go to the Privy Council. It is obviously unfair. There are some friends here coming from Madras. They know that in a case three Judges, a Civilian Judge, a Barrister Judge and an Indian Judge came to the conclusion that a man was guilty and should be hanged, and he was sentenced to be hanged, and there was another Indian Judge who thought that the prisoner ought to be acquitted. The Civilian and Barrister Judges and an Indian Judge took one view and another Indian Judge took a different view, and the Privy Council.....

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official) : Will not the Supreme Court here be confronted with the same difficulty ?

THE HONOURABLE SIR SANKARAN NAIR : No, not in a case like that. In this case the man went to the Privy Council because he could afford to do so, in fact he was able to telegraph the whole judgment to his lawyers in the Privy Council at a cost of thousands of rupees. Now, how many men of ordinary means can afford to go to the Privy Council ? Poor people cannot think of going to the Privy Council. But if there is a Supreme Court sitting in Delhi, everybody, the poor as well as the rich, can appeal to that Court. The argument then is that justice is denied in the case of perhaps hundreds of men who are in a similar predicament and who have not the means of going to the Privy Council. The Privy Council do not go into evidence in all these criminal cases in appeal. I therefore submit, Sir, that there should be a Supreme Court here in India. In the late Imperial Conference, they came to the conclusion that on the question whether there should be an appeal to the Privy Council or not, the question ought to be determined by local opinion : that is to say, if the Dominions do not want it, then there should be no appeal to the Privy Council ; if these countries do want it, then there should be an appeal to the Privy Council. This view has been acted upon by the Privy Council in a certain case where they say : "the constitution of the Empire is tending to develop in the direction with regard to final decision in the local administration of criminal justice." So that the tendency is for the Privy Council more and more to refuse to take cognizance of criminal cases and leave it to the local administrations to settle the matter. I submit, therefore, it is absolutely necessary that we should have a court of final appeal here so that the cases of people who are condemned to death, and cannot go to the Privy Council at such great expense, may be heard and decided here.

Then, Sir, there is another class of cases, and it is an increasing class of cases. Over and over again the Privy Council have been saying in seditious cases that they cannot go into those cases at all, because they could not say whether a writing is seditious or not, and that it is not for them to say what the effect of a certain writing would be in India amongst the class of people who will read it. It is not for me to criticise their opinion which is final. For an illustration I would refer to the case against Mrs. Besant in Madras and also to the numerous cases from the Punjab. In Mrs. Besant's case there have been writings which were charged as being seditious and Judges differed. Some Judges said that some of

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the articles which appeared in *New India* were seditious, while other High Court Judges held the opposite view; and when the matter was taken to the Privy Council, they observed that they could not say what the effect of those writings would be on the local people here; they could not say how the people here would be affected by such writings; and they said that they must refuse to go into the matter. Now a Bill is pending before the other House, which punishes a man whose writing is calculated to insult or outrage the religious feelings of certain people, to create hatred between different classes. The Privy Council will not go into all those questions. That also would depend upon local circumstances, upon the environment here. For that purpose, the Privy Council is not the proper court, and we must have a Supreme Court here in India. That court could go into all these questions and see how far the writing complained of affects the people and to come to a proper conclusion. I submit, therefore, that for all these purposes it is very necessary that we should have a Supreme Court in India.

Now, Sir, I have dealt with all the classes of cases which are not in effect decided by the Privy Council. Now what about the cases which are decided by the Privy Council? Many of these cases deal with Hindu and Muhammadan law, and when I make any observations here, I trust I shall not be construed as being disrespectful having had myself to administer the law under the Privy Council, and by anything that I say I should not be deemed to convey any reflection, so far as I am concerned, upon their capacity and upon the correctness of their decisions in matters of Hindu and Muhammadan law. For that reason I shall not say anything myself but I shall quote what others have said. Take the case of the Hindu law. I will read a quotation from John D. Mayne, one of the most eminent of English barristers, who knows Hindu law, who has practised in courts in India, who has practised in the Privy Council and whose book is a text book in India referred to with respect by Judges and practitioners. I cannot read the whole of the chapter. Those who are curious to know it may read it. The opinion refers to the administration of Hindu law by the English Judges. The words are pertinent. It is a long chapter. This is what he says about the administration of Mitakshara law.

“The consequence was a state of arrested progress, in which no voices were heard unless they came from the tomb. It was as if a German were to administer English law from the resources of a library furnished with Fleta, Glanville and Bracton and terminating with Lord Coke.”

That is Indian law administered by English Judges. That is the opinion of a practising lawyer who knows all about it. There is another man equally eminent, who is a jurist as well as a lawyer. He was a member of the Government of India.....

THE HONOURABLE SAIYID ALAY NABI (United Provinces West : Muhammadan) : May I ask the year in which it was published ?

THE HONOURABLE SIR SANKARAN NAIR : I remember studying it in 1877 and it is repeated in the latest edition of 1926. It is edited by the Chief Justice of Madras. You may take it that that opinion was repeated from 1877 to 1926. I was referring to the opinion of another jurist. He was the Law Member of the Government of India—Sir Henry Maine. It is a long chapter

and I would not like to read the whole of it. It is Lecture No. 2 on Village Communities. He goes much further than Mayne. What he says is that English lawyers have imported English notions into the administration of Hindu law. We know it well. They broke up the joint family system by importing into the administration of Hindu law the notions of individualism which characterise the whole of English law. They have broken up the social system. Then I shall refer to a judge. He was also one of the greatest of Sanskrit scholars. He belonged to the Civil Service. He was a Judge in Madras. His name is Burnell. He translated the well-known Hindu texts, the laws of Manu. This is what he says :

"As the text has been so often referred to by the Courts in India and the ultimate Court of Appeal, the Privy Council in England, it might be expected that some useful help would be got from the law reports ; but this is not the case. Most of the cases decided are evidently wrongly decided and others really need no elucidation, the decision may be very able but (as an eminent writer has said) 'life is not long enough to study able demonstrations that the moon is made of green cheese.' I therefore do not refer to this branch of literature referring to Sanskrit law."

He brushes aside the whole thing. Now, Sir, the question is not whether any decision of the Privy Council is right or wrong. Do the decisions inspire confidence among the experts ? If it is worth while I can refer to cases which have shocked Indian public opinion so far as the administration of Hindu law is concerned.

There is another matter which I have put down in the Resolution. Under the reformed constitution there have been many disputes as to the respective functions of the executive Government and of the Legislature. Questions often arise. These questions are now settled by the executive Government. That is not fair. We ought to have a court here in order to settle all these questions. In the book written by Sir Frederick Whyte, the late President of the Legislative Assembly, and published by the Government of India, he points out that in all those cases where there are doubts about constitutional powers there have been courts to decide all those questions. I submit, therefore, that it is well to have a Supreme Court here in India in order to decide all these questions.

Now there is only one more point to which I desire to refer. If there is a court here and it is optional to the litigant either to go to the Privy Council or the Supreme Court, there will be no feeling of irritation, no feeling of annoyance. Everything will go on well. But if you say : "No" then there is sure to be a feeling of irritation and annoyance among the people. They will say that in the one department in which native ability is conspicuous, that is in the administration of justice we are denied the powers that have been justly given to us and there will be a feeling of soreness. For that reason also it is desirable to have a Supreme Court. For all these reasons I would ask the Council to vote in favour of my Resolution.

THE HONOURABLE MR. H. G. HAIG : (Home Secretary).—Sir, the Resolution moved by my Honourable friend takes my mind back to the weather conditions which those of us who were in Simla a month ago were unfortunate enough to experience. In the plains storms came and went, but long after they had passed away the clouds and rain incessantly surrounded the higher places. I do not wish to press the analogy too far, but I would like to remind the

[Mr. H. G. Haig.]

House that as long ago as February 1925 in another place—I hardly venture to say a lower place—a Resolution with this same object was moved. Streams of eloquence and legal learning descended and after the storm had passed away and the results were measured up, it was found that the Resolution was defeated by 56 votes to 15. I trust, Sir, that this Council will, when the results come to be measured up, record a similar conclusion.

I feel, Sir, a certain disadvantage in dealing with a Resolution on a subject of this kind, moved by a distinguished lawyer who has himself been a Judge of the High Court, talking from his own experience about matters on which he is competent, and I am not competent, to express an opinion. My own official connection with a High Court has never extended beyond a perusal of the remarks that they were pleased to record on any judgments of mine which came before them when I was a Magistrate. Nevertheless, Sir, it seems to me that there are certain broad grounds of principle on which I may reasonably venture to oppose my Honourable friend's suggestions. The objects of this Supreme Court appear to be three: first to replace the Privy Council in civil appeals.....

THE HONOURABLE SIR SANKARAN NAIR: No.

THE HONOURABLE MR. H. G. HAIG: At any rate to provide an alternative; secondly, to constitute a new court of criminal appeal, and thirdly, to interpret the constitution. The last point, I observe, is put in the forefront of the Resolution, but it occupied a less important part in my Honourable friend's arguments, and I venture to think, rightly so. For any question of interpreting the constitution appears to me at the moment to be both premature and subsidiary. It is premature because we do not yet know what the constitution is going to be. It is subsidiary because I trust that whatever constitution we may receive it will not be one of such a character that the interpretation of it will form the main occupation of half a dozen eminent lawyers throughout the year. Therefore, the proposal may really be taken on the main grounds of civil and criminal appeals.

As to the position of the Privy Council in regard to civil appeals, it is often urged, though I do not think my Honourable friend put it forward as of one of his main grounds, that the system of appealing to the Privy Council involves great delay. Well, Sir, I am afraid it is the unfortunate experience that the law almost invariably involves delay; and the preliminary stages of these cases which find their way to the Privy Council involve a delay which has, I fancy, often been commented upon by that body; and it is only recently that the serious evils of delay in civil justice induced the Government to appoint an important Committee to consider how far delays could be mitigated. Delay there no doubt will be in appeals to the Privy Council, and delay, I am afraid, we shall not get rid of under any system. I think the main argument that my Honourable friend advanced was in connection with the unreasonable expense to the litigant. I speak with some diffidence on this point, but I have noticed in a previous debate that that position was challenged—not that the litigant is not put to considerable expense in taking his case to the Privy Council, but it has been suggested that he will be put to possibly

equal expense in taking it before the Supreme Court. For one thing, I understand the Privy Council charge no court-fees and to that extent the Indian litigant gets his law free. If a new Supreme Court is to be established in India, in order to recoup some of the heavy expenditure involved, it would almost certainly be necessary to impose fairly substantial court-fees which would fall on the litigant. Again, my Honourable friend suggested that the lawyers in England were more fortunate in the scale of fees they were able to secure. But I am told that the most eminent lawyers in this country demand fees which will bear comparison with those in most other countries, and I do not suppose that the litigant before the Supreme Court will get his results at any very small cost. It must be remembered that those who take full advantage of all the processes that the law allows nearly always find that this privilege is purchased at considerable expense; and it also seems to me—I do not know whether it really is so—that the rich man must in the long run have some advantage over the poor man. This proposal, Sir, will increase litigation and I think my Honourable friend put that forward as one of the advantages. It brings an appeal within the reach of a wider class of people. That no doubt is a fact, that a Supreme Court will encourage appeals, and there we have a difference in the point of view which I think will always exist between the lawyer and the layman. The lawyer in his pursuit of some ideal solution is prepared to go on for long, but the client sometimes is not; I need not remind the House of that famous, though fictitious, case of *Jarndyce v. Jarndyce* where all the resources of the law were developed, no doubt, to the great satisfaction of the lawyers but perhaps not to the equal satisfaction of the parties, and how the case came to a dramatic conclusion when it was discovered that the whole subject of the litigation had been swallowed up in legal costs. Though that is an extreme and fictitious case, it does suggest a point of view which perhaps would not appeal to my Honourable friend, but still which does appeal to a large number of people.

At present, Sir, we have a system under which cases of sufficient importance go home to the Privy Council and are heard, as I understand, before some of the most eminent legal talent in the Empire. I am not competent to traverse my Honourable friend's statement about the position which the Privy Council holds in popular estimation in this country, but I have always understood that it holds a very high place in the minds of lawyers, and that it is a Court to which very great prestige attaches.

Now, Sir, shall we get in the Indian Supreme Court a better court with greater prestige and greater efficiency in the performance of its work? I do not know whether my Honourable friend contemplates that this court of his would include any English Judges. If so, it seems clear that they could not be judges of the same eminence as those who sit at present in the Privy Council. But even if he does not contemplate that, it seems to me that there will be a certain difficulty in securing the personnel of Indian Judges required. For one thing, they will have to be paid very highly, and the expense will be very considerable.

To revert for a moment to the point of the work which the Privy Council performs. I understand that the contention of my Honourable friend is that the court which he contemplates would be particularly competent to deal with questions peculiar to India, such as Hindu and Muhammadan law



[Mr. H. G. Haig.]

and so on, while the Judges of the Privy Council have not got that experience which is essential to come to proper decisions on these questions. Well, Sir, that point, I think, has been very largely met by a decision taken only a few months ago whereby two Judges are to be added to the Privy Council who, as they are now to be amply remunerated, should provide the very best available Indian experience. In that respect, Sir, it seems to me that the constitution of the Privy Council will be very appreciably strengthened.

There is one other point on which my Honourable friend did not touch, and that is the effect of such a court on the existing High Courts in India. These High Courts at present occupy a very special position which is due, in my opinion, mainly to the fact that they are the final authorities in India. If you set up in India an authority superior to those High Courts, it seems to me that you must inevitably depreciate their importance and their status, and I should regard that as a very unfortunate consequence.

With regard to the suggestion that a new court should be established as a Supreme Court of Criminal Appeal, my Honourable friend seemed to assume that the addition of a further criminal court of appeal would clearly be an advantage. I venture to express my doubts about that. There is ample machinery, I venture to suggest, for appeal in criminal cases already existing. We surely do not want to imitate a procedure which allows condemned prisoners to torture themselves for years with hopes of reprieve. That is a system which shocks the normal man's sense of justice, however much it may be based on an anxious desire that justice should be done, and I trust that our procedure will not tend to devise facilities for undue prolongation of criminal appeals.

I think, Sir, I have said enough to enable me to ask the House with some confidence to reject this Resolution. When the question of a Supreme Court was circulated for opinion among the various authorities in India, it was quite plain from the opinions received that there was no kind of identity. There was no clear demand in the country for this innovation. There is no obvious advantage from the setting up of this new court, and I trust that the Council will reject this Resolution without hesitation.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, I have very great pleasure in supporting the Resolution moved by one whose opinions by reason of his long association in the field of law, and his undoubted knowledge of the judiciary, are entitled to the greatest weight, but I think in reply I have not heard any cogent reasons put forward by my friend Mr. Haig. He began by saying that in 1925 the Legislative Assembly rejected it by a large majority. I am happy, Sir, that at least on matters of this kind my learned friend, as the official mouthpiece, is prepared to lay very great weight on the opinions of the other House. Generally, I find that they are apt to disregard the views expressed in the other place, and as has been very often complained of, the Resolutions in the other place passed with a tremendous majority, are put into the waste paper basket without the least hesitation. In this matter because of the feeling that prevailed at the time this Resolution was under discussion, they could secure the support of the Swarajist Benches, the Home Secretary feels that the opinion expressed in the other House must be given the greatest weight. I am glad Sir, that, after all, the Government have

begun to think there is some useful work being done in the other place, and the work done there may be held up here as an object lesson.

But before I go deeply into the question why it was possible for the Government to defeat this Resolution in the other place, I would generally deal with the objections raised by my friend. As regards the first part of the Resolution, namely, that there should be a Supreme Court to interpret and uphold the constitution, my Honourable friend Mr. Haig said that the establishment of a Supreme Court here is somewhat premature. He says we are not quite sure what the constitution is going to be ; we are in a state of flux ; we have not got a full-fledged constitution ; and that in this state of transition it is not necessary for us to have a court which will be in a position to set at rest doubts and disputes between the non-official and the executive sections.

Sir, I am inclined to think that the very fact that we are in a transition stage, the very fact that the Government of India Act has been in operation only for a short while, the very fact that there will be a new Government of India Act with further changes, would be the proper reason for having a court, an impartial body, to decide all questions of dispute. I am not surprised that my Honourable friend, as the mouthpiece of the executive, is not quite willing to give up the position of the Government being judge in its own cause. I think the proposition has merely to be stated to be rejected. It is one of the fundamental principles of law that a party who is vitally interested ought not to be the judge. It is for this reason that in all countries where they have a proper constitution there is a court which decides on the construction of Statutes relating to the constitution. I think the fact that we are in the initial stages of constitutional evolution is one of the reasons which ought to be taken into account for urging strongly the establishment of a court to interpret and uphold the constitution.

My Honourable friend, Mr. Haig, has been very solicitous of the litigants and wants to spare the expenses of the litigants, and he thinks that if a Supreme Court is established we are bound to charge court-fees—he takes it for granted. In India we have got a system where justice is practically being sold. I tried my best on another occasion to bring to the notice of this Council the grave injustice that is being done by the extravagant court-fees that are being charged in dispensing justice to persons who are paying taxes for protection of their persons and property. There are various considerations involved in it, and I do not know if, in an institution like the Supreme Court, it is necessary to follow the subordinate courts and the High Courts in charging court-fees. We may as well make a beginning in establishing a Supreme Court in not charging any court-fees at all. That will be a proper thing to do, and whatever may be the reasons which have induced the Government to levy court-fees and to have it embodied in a Statute, it does not apply equally in the case of the Supreme Court, because the question of costs for the upkeep of a Supreme Court will be a very minor consideration and it will not be a very heavy one ; at best the cost will not come to more than 10 lakhs of rupees per annum by the institution of the Supreme Court, and I do not think it will be necessary to charge any court-fees at all for appeals going up before that Court, and the Supreme Court may very well follow in the footsteps of the Privy Council in not charging any court-fees.

[Mr. P. C. Desika Chari.]

My Honourable friend has been waxing eloquent over the difference in the point of view of the lawyer and of the laymen. I know the lawyer is not regarded with sympathy in very many quarters and I am not surprised at the attitude taken by the Honourable the Home Secretary. I hope he and the privileged class to which he belongs would be very well pleased if there were no lawyers at all. They regard this class of people unfortunately as a scourge.

THE HONOURABLE MR. H. G. HAIG : No.

THE HONOURABLE MR. P. C. DESIKA CHARI : I know personally that they have no sympathy with this class of people and they are merely tolerating them because they have got to ; they have no option in the matter. I know the feeling in the matter. Though I came into the profession only about 1910, even then I found the civilian gentlemen, especially in the mofussil, dispensing justice in their own bungalows, who were inclined to treat this class of people as a pest and would not have taken kindly to them but for the fact that the Government would not allow them to have their own way and to act at their own sweet will and pleasure. They were obliged to tolerate these people, and gradually I may say there has been a change, I think a compelling change, on the part of the civilian officers to regard with less and less of intolerance this class of people who have to exist. They exist all over the world and they will continue to exist in spite of Mr. Haig and the class that he represents.

THE HONOURABLE MR. H. G. HAIG : I was talking of the relation between lawyers and clients and not between lawyers and officials.

THE HONOURABLE MR. P. C. DESIKA CHARI : That is quite enough for me. I can very well understand the attitude of mind which gives expression to these views and I really content myself with merely expressing....

THE HONOURABLE THE PRESIDENT : I would remind the Honourable Member that he has hardly come to the Resolution as yet. He has only four minutes left.

THE HONOURABLE MR. P. C. DESIKA CHARI : I am only dealing with the view points which have been put forward. I am only meeting the arguments, and if they were irrelevant arguments I cannot help it, and I am only showing that those arguments were irrelevant. As regards the popular estimation in which the Privy Council is held, there is absolutely no doubt that the people regard with very great satisfaction the work done by the Privy Council, and it is not necessary for me to question the ability of the Judges who generally compose the Privy Council or their estimates of the facts and law as they happen in every day life. But I may say this that in matters of Hindu and Muhammadan law, and in matters where a knowledge of local customs is necessary, where a deep understanding of the Indian conditions of life is quite essential, a court in India, whether consisting of Indian Judges or of English Judges, would be in a better position to appreciate the view points put forward before the Court than a court sitting 6,000 miles away, mainly for this reason, whether the Judges know intimately the local conditions or customs or not, whether they have an intimate knowledge of Hindu and Muhammadan law or not, here in India the litigant will have an opportunity of engaging legal luminaries who would be in a position to put before the Judges the points of view in the

proper perspective and the very same Judges who do work in England would be better able to discharge their duties more satisfactorily in India because they will have better assistance here. It is for this reason, if not for anything else, that we urge that the establishment of a Supreme Court will be a great boon to the people of India. In going through the debates in another place in 1925 I found a good deal of stress has been laid on this aspect that litigation is an evil, and any attempt made to check the growth of litigation and prevent people from seeking redress in courts of law is a thing very much to be desired.

I take very strong exception to this view. If it is admitted that Judges are liable to err, the litigant should ordinarily have recourse to the higher courts of appeal, unless there are very strong public grounds to prevent him from having access to the court of appeal. That is why the rights of appeal have been hedged round by various restrictions and there is no harm in circumscribing the limit within which the right of appeal may be allowed to the Supreme Court, but I think the reason given by this set of people that litigation is an evil and ought to be checked is the reason which is very much in support of the view for the establishment of a Supreme Court. If a person ought not to be deprived of his just rights by being denied the right of appeal, then the very fact that there would be a larger number of cases before the Supreme Court is a thing which ought to be taken into consideration because you would otherwise be prejudicing the interests of a number of people who are anxious to have recourse to the highest court of appeal by placing the court of appeal 6,000 miles away and placing it beyond their reach. The expenses, inconvenience and other attendant discomforts in connection with an appeal to the Privy Council can be best realised by the litigant himself, and I as a person who have had some little knowledge and experience of these matters can assure the Council that by the institution of the Supreme Court the litigant in India would feel happier, would feel that he had been given a right of which he had been unjustly deprived. My friend referred to the difficulty of securing English lawyers. The expense involved would be considerable. Personally, I am not against the English personnel, but if we cannot get them I do not think it would be any calamity at all. It is admitted in the legal world that there are legal luminaries in India who can compare favourably with their compeers in England. There is no gainsaying that fact. In India you can get persons with the requisite qualifications. If we are compelled to have a purely Indian personnel because Englishmen would not come out, I would not consider it as a thing to be regretted. I am not against an English personnel, but if you cannot have that, you can have the indigenous element which is equally good. It will be an improvement in the situation.

**THE HONOURABLE THE PRESIDENT:** The Honourable Member has exceeded his time-limit.

**THE HONOURABLE MR. P. C. DESIKA CHARI:** I will finish in a few minutes.

**THE HONOURABLE THE PRESIDENT:** I am quite aware that it is within the discretion of the Chair, as a matter of practice, to allow Honourable Members to exceed the time-limit, but I interrupted the Honourable Member once in the course of his speech and I think I may explain to the Council why I do not

[The President.]

propose in this case to exercise my discretion in favour of the Honourable Member who has just resumed his seat. The Honourable Member addressed himself at great length to the development of an argument about the unpopularity of lawyers. That is an interesting and possibly amusing subject for discussion in this Council, but it has only touched the fringe of the Resolution, and when the Honourable Member occupied half his time in addressing himself to that subject I came to the conclusion that it would be impossible to allow him to exceed the time-limit.

THE HONOURABLE SIR MANECKJI DADABHOY: I have heard the speech of the Honourable Mover of this Resolution with great attention and the respect which his services on the Bench and his position in public life demand, but I have come to the conclusion that I cannot possibly support his views, anxious as I was to see if there were any material points in his speech which would have induced me to alter the opinion which I had already formed on the subject. The essence of the proposition which the Honourable Mover has laid before this House is that there should be a duplication of machinery for the purpose of disposing of Indian appeals. As I have understood him, he does not want to do away with the existence of the Privy Council but he wants side by side with the functions exercised by the Privy Council to establish another court in India enjoying concurrent and somewhat more extensive powers. A brief reflection of the position will prove that to do such a thing will be highly incongruous and will absolutely undermine the prestige, the position and the authority of the highest court of appeal. I am sorry that in the course of a very interesting speech my Honourable friend remarked that his objection to the Privy Council was of a three-fold character, and mainly that it assisted the rich litigants against the poor litigants. Sir, I must enter an emphatic protest against this reflection on the Privy Council. As a lawyer who has worked for 30 years I have come to the conclusion that even if justice has failed in this country it has been meted out with absolute impartiality in the Privy Council, and this fact is acknowledged not only by lawyers....

THE HONOURABLE SIR SANKARAN NAIR: That is a travesty of my arguments. I never said that.

THE HONOURABLE SIR MANECKJI DADABHOY: I have exactly taken down your words and I will read that to you.

THE HONOURABLE THE PRESIDENT: Will the Honourable Member kindly read it?

THE HONOURABLE SIR MANECKJI DADABHOY: He said "The Privy Council assists the wealthy litigant against the poor litigant" and I shall be corroborated by the official reporter on this point. Sir, the traditions of the Privy Council are well known and have been well maintained. I know as a lawyer some of the most brilliant Judges have sat on the Privy Council, who are entitled not only to our great respect on account of the profound erudition of these men, but they have in the past occupied seats on the Judicial Committee with great credit and have given complete satisfaction all over the country. Now, Sir, as regards the constitution of the Supreme Court, one fundamental and vital gap in the speech of my Honourable friend has been his failure to refer to the constitution of the Supreme Court. He has not enlightened us

as to how the Judges are to be appointed, from what cadre the Judges are to be taken, whether they are to be barrister Judges or whether they are to be wholly Indian Judges, or whether they are to be selected from mixed ranks. I think my Honourable friend has purposely abstained from making any reference to it because this fundamentally takes the bottom out of the case he has put forward as to the justification for the establishment of the Supreme Court.

Now, Sir, a case is sought to be made out on the ground of a want of a final court of criminal appeal. It has been stated that in criminal cases where death sentences have been passed there has been no right of appeal and the poor condemned men have no funds to go to the Privy Council even if the latter court desired to interfere, and therefore they have to submit to the arbitrary judgments of the local High Courts. Now, I think my Honourable friend who was a Judge of the High Court and who for many years practised at the Bar knows more than any one else that in the majority of criminal cases coming up before the High Courts in the various provinces in this country, they are not even defended. The cases are not even argued by counsel because the majority of the litigants are too poor even to engage the services of lawyers in the High Court; but the cases do go to the High Courts under a provision of the Criminal Procedure Code which makes it necessary that there should be confirmation of such death sentences by the High Courts; and the statistics will prove that seven out of ten cases are absolutely unrepresented. Do you expect these litigants to carry their appeals to the Privy Council? Moreover, what are the majority of the cases? We all know—everybody knows—that most of these cases are cases of murder, arson and kindred offences committed by poor, absolutely destitute, classes of people in many cases who have not a farthing to provide for the purpose of their defence. Therefore the various texts that my Honourable friend has quoted do not in any way support his case.

My Honourable friend next referred to two classes of cases specially, cases relating to the constitution and particularly those cases where the interpretation of the constitutional questions between the executive and the people is involved; my Honourable friend fears that in those cases no adequate justice would be meted out to the public owing to local prejudice. Now, a little reflection will show that as regards these very cases of the interpretation of the constitution, where the executive and the public differ, would not the aggrieved party get better justice, more unbiassed and impartial justice in the Privy Council than from a Supreme Court constituted in India with local Judges imbibing local ideas and prejudices, local bias, local influences and otherwise? I say the whole bottom is knocked out of the argument of my learned friend merely by asserting that the aggrieved party would get better justice in the uncontaminated and unbiassed and free atmosphere of the courts sitting in England. I say that for all these reasons my learned friend's argument on this point is absolutely unsustainable.

Further, my Honourable friend ought to know that the constitution of a Supreme Court will absolutely undermine the authority and the prestige of our various High Courts, quite apart from the question of inconvenience which it will cause to the litigant. We know in India how much reverence is attached

[Sir Maneckji Dadabhoy.]

to the opinions of the various High Courts. If you establish in the same country in some isolated place another court having concurrent jurisdiction or having also jurisdiction to supervise, superintend and revise the authority and the judgments of these courts, you can understand what respect it would carry in the minds of the general public and how it will affect the dignity of the several High Courts.

My Honourable friend, Mr. Chari, repudiates the allegation of Mr. Haig that no additional cost will be involved in the establishment of a Supreme Court in India. I am surprised to hear such a statement. If a Supreme Court is constituted, there will be at least twelve Judges; their salaries will certainly be a little bit higher than the salaries of High Court Judges....

THE HONOURABLE MR. P. C. DESIKA CHARI : I said it would come up to Rs. 10 lakhs per annum.

THE HONOURABLE SIR MANECKJI DADABHOY : It will cost more. They will also require a big establishment of Registrars and other assistants which is necessary for the maintenance of the Supreme Court, with the result that if you do not require the litigants to pay for the upkeep and the Court-fees, it will certainly involve the State in a heavy annual expenditure, which I am certainly not prepared to accept. What is the advantage of incurring this expenditure? The reforms have already made the administration of this country top-heavy. In Provinces where the work used to be done by one Governor and two Executive Councillors, we have now three or four Executive Council Members and three or four Ministers; and on the top of this the country is now asked to bear the burden of an unnecessary expenditure just for the pleasure of having a Supreme Court which is not likely to attract any considerable weight of public opinion or respect. If my Honourable friend and those who have supported him think that something should be done in the matter of extending the power of appeal in criminal cases, that could be done easily by revising and extending the power of appeal to the Privy Council in criminal cases; some method could be devised; but as I have pointed out before our present experience has shown that there is absolutely no case for any such departure. Moreover, it is well known that in criminal cases the Privy Council does exercise the power of interference and control where there has been a gross miscarriage of justice or perversity or deviation from the natural course of justice. The Privy Council does maintain power in its hands to interfere but in rare cases only. As the records of the last 20 years of the various High Courts will prove, the Privy Council has interfered several times in criminal cases where such interference has been justified on grave grounds. If necessary, that power might possibly be usefully extended. But the exercise of that jurisdiction by the Privy Council on rare occasions does not, in my opinion, justify the establishment of a Supreme Court in this country.

I have carefully considered the proposal of the Honourable the Mover of the Resolution. There is much to be said against it, but the time at my disposal does not permit me to enter into more elaborate discussion of the subject. I would, therefore, ask the Council that they should not be carried

away by mere sentiment on this occasion. If Honourable Members will reflect on the position, they will admit that no unanswerable case has been made out for the establishment of a Supreme Court in this country. However, Sir, the statutory period of 10 years for further inquiry in the matter of reforms will expire before long. We do not know what will be the next instalment of reforms which would be granted by His Majesty's Government to India. There will be time enough when the Royal Commission comes out to consider that question, and if any necessity then arises for the establishment of a Supreme Court there will be ample time and opportunity to consider this matter.

THE HONOURABLE SAIYID ALAY NABI: Sir, after the able and lucid speech of the Honourable Mr. Haig and the lengthy arguments of my Honourable friend Sir Maneckji Dadabhoy, I feel, as this matter concerns deeply the interest of the people and the legal profession incidentally, I should say a few words. The Resolution as it stands asks, in the first place, that a Supreme Court should be established in India to interpret and uphold the constitution. Now, the Honourable the Mover, I am quite sure, is fully aware of the fact that in self-governing Colonies like Canada and Australia, Supreme Courts had been established only after self-government had been established there, and I think it would be rather premature to establish a Supreme Court here before we have self-government in this country. A Supreme Court will have to depend to a large extent upon the constitution of the country, and I think, so far as this portion of the Resolution for the establishment of a Supreme Court is concerned, it is rather premature.

Then the second part of the Resolution says that the Supreme Court should have power to act as a court of final criminal appeal against all sentences of death. Now, a great deal has been said about this part of the Resolution, and a great deal of emphasis has been laid on this part of the Resolution by the Honourable the Mover. Now we must be very clear as to what the law is at present. It is this. When a man is found to have committed a murder, he is sent up by the police to a first class Magistrate. This first class Magistrate has generally some years' experience to his credit. He goes into the evidence which is tendered on behalf of the Crown. He takes down the statements of the accused person, and evidence for the defence, if tendered, by the accused. If he finds that the accused is guilty, he sends up the case to the Sessions Court, with his finding which deals with the evidence on which his judgment is based. There is one judgment there. When the case goes to the Sessions Court, there it is tried with the help of the assessors and jurors, as the case may be, and they are generally four or five in number. They sit down and hear all the evidence again and all that the accused has got to say and also all the evidence that is tendered on behalf of the Crown, and when they find that the accused is guilty, then they make a recommendation to the High Court that the accused be hanged by the neck until he is dead. Then the case goes before the Honourable High Court. There the Judges sit down and go through all the evidence, and if they come to the conclusion that the two concurrent judgments of the lower courts are correct, they confirm the death sentence. In this way there are altogether three concurrent judgments before a man is condemned to death and is hanged. What more do you want now? Do you want four or five judgments? Do you like to have the same procedure, the same system of jurisprudence, of which we have been hearing so much lately under which a man has



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to await his fate for 7 long years before a final verdict is given and the man executed? I think so far as the law at present is concerned, it requires three concurrent judgments. Is that not enough? If there is any doubt you can amend the law on that point, but there is no reason why you should have a separate Supreme Court of Appeal.

Now, the third object of the Resolution is that the Supreme Court is to act as a revising court in specified serious cases. Now, it cannot be said, and it has not been said, that the Privy Council has not interfered in cases where grave and glaring injustice has been done where a certain important point of law is involved.

The fourth object of the proposed Court is to hear civil appeals now heard by His Majesty's Privy Council. This, Sir, is substitution pure and simple for the Privy Council in England, when read with clause (c) of the Resolution, with which I shall deal presently.

It has been said very clearly by the Honourable the Mover of the Resolution that the object of the Resolution is not to do away with the powers and prerogatives of the Judicial Committee, but to leave the option to a litigant either to go to the Supreme Court, if it is established, or to the Privy Council. That will mean nothing but a multiplication of courts, and I can say, having had some experience in the profession, a litigant, if he is given the option, would undoubtedly go to the Privy Council rather than to the Supreme Court. Why should he go to the Supreme Court? He has gone already to the High Court, and he has already had a decision either in his favour or against him. I cannot possibly by any stretch of imagination find that, if a Supreme Court is established here, the Judges appointed to it would be of greater calibre, of higher standing and greater status than the Judges of the High Courts. So far as I can see, they will be of the same standing and of the same status as the High Court Judges, unless the Honourable the Mover will get some angels from the Indian heavens. But if a litigant is not satisfied with the judgment of the Supreme Court, he will go to the Privy Council, as in any case the prerogative of the Sovereign to hear grievances is there.

Then, Sir, a great deal has been said about the Hindu law and Muhammadan law. It has been said by the Honourable the Mover that the decisions of their Lordships of the Privy Council have been very unsatisfactory as regards Hindu and Muhammadan law. Well, Sir, whatever might have been the case hitherto, my friend must know that the Privy Council has been reinforced now, and we have two eminent Indian Judges, Lord Sinha and Mr. Justice Amir Ali, sitting there. I think we can very well trust to these eminent Indian Judges to decide satisfactorily points arising out of Hindu and Muhammadan law. According to the constitution of the Privy Council, we have now two Indian Judges and two eminent English Judges who mete out justice, and I think that is quite satisfactory.

Then, Sir, as regards the confidence of the people. I may point out to my friend Mr. Chari particularly, that the Indian National Congress from the time of its inception in 1885 has been repeatedly asking that the Governors in the provinces in India should be from among the public men of England. They

have been asking that year after year. Now, what is the reason for it? Because Indians think that those public men of England will bring with them those particular virtues in the nature of training that they have got in the free atmosphere of England and in her free institutions, and that they would come unhampered by any feelings of provincial or local prejudices or prepossessions and uninfluenced by any considerations except that of doing justice to the people and that they would be fully alive to the rights and liberties of the people. This is, I think if I am correct, the idea underlying the suggestion of the Indian National Congress. Well, Sir, if it is so far as the executive is concerned, why should not the same consideration prevail in the case of the legal tribunal?

These considerations should apply, I think, in a much greater degree in the case of legal tribunals because my Honourable friend would agree with me that after all, looking at it from the public point of view, legal tribunals where law and justice is administered are the bedrock of administration and the Government and they are responsible for the welfare and happiness of the people at large. Considering these points, so far as the legal profession in this country are concerned, they on the whole came to the conclusion that a Supreme Court is not required at present in this country. For these reasons I feel that I should oppose the Resolution.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammaḍan) : Sir, I feel that I am merely in a position to accord a general support to the Resolution moved by the Honourable Sir Sankaran Nair. I am unable to advocate the establishment of a Supreme Court for all the specific purposes mentioned by him or for all the reasons urged by him. As for the comparative efficiency of the Privy Council and the Supreme Court which may ultimately be established in India, I have not much to say. I think the Privy Council has functioned well so far, and there is no reason to suppose that it will not continue to do so. It is said that the Privy Council suffers from a certain amount of disadvantage on account of the absence of facilities to administer cases relating to Hindu and Muhammadan jurisprudence. To some extent it is true, but a great volume of litigation in this country directly bears not only upon personal law and the Hindu and Muhammadan jurisprudence, but even more largely upon questions arising out of relations between parties based on the law of contracts, trusts, conveyancing and so on which are mainly imported from foreign jurisprudence. On these matters I must say that the Privy Council Judges who are brought and bred up in the atmosphere of English jurisprudence have decidedly an advantage over Indian Judges. Therefore, while there is a disadvantage there is also an advantage, and the Supreme Court of India may suffer from some disadvantages from which the Privy Council may not at present suffer. My Honourable friend Sir Sankaran Nair has illustrated his point about the unsatisfactory quality of the work of the Privy Council by references to some cases. During my practice in the Madras High Court, I have known of at least two instances which may be usefully brought to the notice of this House, as illustrating the excellent quality of the work of the Privy Council with reference to the judgments of my learned friend himself. In one case he decided a very substantial question relating to rights in the waters of streams and *nullahs* running through zemindars' and inamdars' estates. The decision was dissented from by 12 other Judges in the High

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Court at one time or another and it is only the Privy Council that set right matters by overruling the decisions of the 12 Judges and upholding the classic judgment of my Honourable friend, Sir Sankaran Nair, which has ever since been followed. The landholding class in India is deeply indebted to Sir Sankaran Nair and more so to the Privy Council, for Sir Sankaran Nair's judgment would have been a dead letter with the dissenting judgments of 12 Judges. With regard to the other case mentioned by me, it was the famous Pundi murder case, where a rich landholder was arraigned for murder. Justices Bakewell and Sadasiva Aiyar differed in the reference. Justice Bakewell was for convicting the man and Justice Sadasiva Aiyar was for acquitting him. Under the law it had to be sent to a third Judge and Sir Sankaran Nair happened to be the third Judge. He wrote a long judgment convicting the accused. The Privy Council said that the learned Judge's judgment resulted in gross injustice as he "did not observe the processes of law and violated the rules of natural justice". These were the very words of the Privy Council, which were merely a formal renunciation of the principle laid down in the famous case of *In re Dillet*. With these observations they set aside the judgment of my learned friend, and saved the zamindar from the gallows. There may be much to be said on both sides, regarding the quality of the work of the Privy Council. At the same time, even accepting for argument's sake all that has been said in praise of the Privy Council, I am not willing to accede to the position that the Privy Council should continue to administer law and justice in preference to a Supreme Court in India. Otherwise, it may be equally urged in favour of control that the Secretary of State in Council for India will exercise better supervision over the civil administration of this country, or that the Army Council will exercise a more efficient supervision over the military affairs of this country, and that any authority in India is not likely to function so efficiently as any of those foreign authorities. Even then, I should say I would prefer to have a less efficient supervision and less informed control in India in preference to more efficient foreign control. It will be absolutely inconsistent, incongruous, with the aspirations of India for autonomy and self-government to say that we shall purchase better justice from England because we cannot get the same quality of justice in India. On that ground I shall support the Resolution.

But with regard to the scope of the functions of the Supreme Court, I personally feel that the Supreme Court or the Privy Council, whichever it may be, ought to have very, very restricted powers of appeal both in criminal and civil cases. I am for making the High Courts practically the final authorities both in ordinary criminal and civil litigation. I quite agree that there ought to be a Supreme Court to discharge certain functions which involve the exercise of an exceptional jurisdiction. Beyond that, I do not think that we ought to use this Court for the purpose of exercising ordinary appellate jurisdiction. Therefore, I am for making the High Courts in India supreme in all matters of ordinary civil and criminal litigation, and vesting in the Supreme Court exceptional jurisdiction. So I cannot agree to all the details of the scheme of the Supreme Court as laid down in the Resolution.

It may then be asked for what purpose I want a Supreme Court in India? First of all, with regard to the interpretation and upholding of the constitution I feel that there is an absolute necessity for a Supreme Court in India. My

Honourable friend Mr. Haig said that its establishment will be premature because we do not know what the constitution will be. But take the constitution as it is. The Government of India Act contains several sections which involve the interpretation of very difficult questions. I know as a matter of fact that in 1927 many items in the Budget are made non-votable which were votable in 1921 by the process of interpretation of the constitution. When the executive finds some inconvenience in bringing an item before the Assembly they raise the point that it is non-votable, and in his capacity as the head of the executive, His Excellency the Governor General will decide that it is not votable. Therefore, the executive by itself raising the point and by itself deciding it in its own favour, has taken out of the purview of the Assembly many items which were votable in 1921 and have made them non-votable in the year of grace 1927. There is a section of the Government of India Act which to my mind is very clear as to the right of any vakil to be appointed to the office of Chief Justice of a High Court. But the Government's law officers have never been bold enough to accept that interpretation of the law and allow an Indian vakil to occupy the exalted position of the Chief Justice of a High Court in any of the Provinces. I can cite many more instances. But I have also in view a larger purpose for the Supreme Court, in connection with maintaining the constitution. I have read a volume of opinion on the question of including the Indian States in any scheme of quasi-federal Government in India. If that event comes about, there ought to be a Supreme Court which will decide matters arising between the Indian States and the Provinces.

In fact one of the proposals put forward by some of the States themselves has favoured the establishment of a supreme judicial tribunal in India. There is also an argument, with which I agree, in the Honourable Sir Sankaran Nair's speech, namely, about the cost and the delay. Many a just cause has been abandoned owing to the enormous expense involved in appealing to the Privy Council; the cost is so prohibitive as to make it practically impossible for litigants of limited means to carry the litigation to the Privy Council. If the zamindar of Pundi was acquitted, his innocence was vindicated by reason of his long purse. The advantages of a Court of final jurisdiction, however limited the jurisdiction may be, ought to be made available at less cost and much less inconvenience. There is yet another reason why I am in favour of a Supreme Court for India, and that is the present tendency of every self-governing Colony is to have a Supreme Court for itself. The Dominions of South Africa, Australia, Canada and the Irish Free State have established Supreme Courts of their own and they have by convention and practice prohibited matters going to the Privy Council, and the Privy Council has itself expressed its reluctance to deal with matters which a domestic Supreme Court is competent to deal with. It is a legitimate aspiration for Indians also to have a final court of their own. Finally, I wish to mention another consideration by which I am influenced. In 1921, when my friend Dr. Gour moved a Resolution in the Assembly, it was circulated for opinions by the then Law Member, Dr. Sapru, to the various Local Governments, High Courts and other legal bodies. I looked through the opinions and curiously enough found that the Madras Government, the Madras High Court, the Madras Vakils' Association and the Madras Advocate General, all subscribed to the view that a Supreme Court for India was a very desirable thing. Therefore opinion in Madras is entirely

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in favour of a Supreme Court. I am parochial enough not to go against such authoritative opinions received from Madras. On that ground also I support the motion for the Supreme Court.

One more word and I have done. The Honourable Mr. Haig pointed out that the establishment of a Supreme Court in India would detract from the prestige of the High Courts. I do not see why it should, while the High Courts are not considered to be inferior courts because there is an appeal to the Privy Council. Whether the final Court is the Supreme Court in India or the Privy Council in England does not make the least difference. I do not look upon my High Court as any the less dignified because there is an appeal to some other court. I can confidently say that it would not suffer in its prestige in any way by the establishment of a Supreme Court. I am really unable to see why the Honourable Mr. Haig should think so. There is just one other small matter I want to mention, and that is, the argument that the Assembly turned down the proposal in 1925 by 56 to 15 votes. I am very sorry that it should have done so. I cannot say why and how it happened. It had nothing to do with the Congress policy. I can assure you it was not treated as a party question by the Congress Party. I cannot say what were the reasons which influenced the Assembly then, but I am sure that the Honourable Members in this House will not be prejudiced in any way by that vote. With these words I accord my general support to the principle of the Resolution moved by Sir Sankaran Nair.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, my Honourable friend Mr. Ramadas Pantulu, it seems to me, is not in favour of this Resolution as a practical lawyer, but as a politician he feels bound to support it. Now, I propose to look at this Resolution merely from the point of view of the practical lawyer. In my view it will be a sorry day for India if the administration of justice is influenced by any political consideration; the two things ought to be absolutely separate, particularly in the case of the administration of justice. Now, let us take the arguments which the Honourable Mover has advanced in support of the Resolution. He first suggests an alternative court, that is to say, leaving the option to the litigant either to go to the Supreme Court or to the Privy Council. I should like to know who is to have that option? If the appellant is to have that option and if he chooses to go to the Privy Council, how does he get rid of the objection which he has raised with regard to the Privy Council, namely, that it enables the rich litigant to go to the Privy Council? If the option is given to him and he happens to be rich and he desires to harass his poor opponent, he will go to the Privy Council. That does not save the poor man and enable him to have justice done in this country without any expense, and why is the option to go to the Privy Council to be given to a man who has lost here, so that the man who won here is to be dragged to a court to which he cannot afford to go? How does he get rid of the objection that he has raised, an objection I will deal with later on, that the appeal to the Privy Council really assists the rich litigant and not the poor? The position will not be altered by giving the option to the appellant. It is also equally clear that we cannot give the option to the respondent, the man who has won here. I notice that my Honourable friend in his Resolution safeguards the privileges and the prerogative of the

Crown to hear appeals in all cases. Now, supposing there is a Supreme Court here, the alternative court which he suggests, is there anything by which you can prevent a litigant from applying to the Privy Council for special leave to appeal? My friend says that the man who appeals to the Supreme Court would have no power to go to the Privy Council and that he must choose the one or the other. Suppose he has elected to go to the Supreme Court and he has lost there. Can you by any means prevent the Crown from hearing another appeal from that court? Even now, although appeals are restricted to cases where the value is Rs. 10,000 and upwards, special leave is given by the Privy Council. You cannot prevent it and what would be the result of the institution of this Supreme Court? You will be practically placing another step in the numerous steps which a litigant can take in the matter of appeal. Therefore, I submit that it is not a feasible proposition to have an alternative Supreme Court in this country.

Now take the other practical difficulties. I think I am right in saying that the Honourable Mover suggested that the court should be at Delhi. As a matter of fact if there is to be a Supreme Court, there is no other place for it. You cannot have it in Calcutta because Madras and Bombay will never agree. You cannot have it in Madras because Bombay and Calcutta will not agree, and you cannot have it in Bombay because Madras and Calcutta will never agree. If you were to have a Supreme Court it will have to be in Delhi. If you have it in Delhi, where is your Bar at Delhi which will be able to deal with cases that will come before the Supreme Court? You will have to import all your lawyers from Calcutta, Madras or Bombay; and if you have to do that I find it difficult to believe that the hearing of a case in the Supreme Court at Delhi will be any less expensive than the hearing of a case in the Privy Council. I can say of Calcutta and I believe it is equally true of Bombay—I am not sure of Madras—that you will not be able to get a lawyer who will be able to do justice to a case in the Supreme Court for less than Rs. 2,000 a day, from the day he leaves Calcutta till the day he returns to Calcutta—that is the usual practice in Calcutta. What does that mean? If an ordinary case in the Supreme Court takes a day for hearing, it will cost in barrister's fees alone from Rs. 5,000 to Rs. 6,000. Now, you can get a Privy Council case heard—I am only taking the hearing costs, because the preliminary costs will be practically the same in both cases—for Rs. 4,000 or Rs. 5,000, provided of course you are not anxious to retain fashionable counsel; of course if you have Sir John Simon or counsel like him it will cost you Rs. 10,000 or Rs. 15,000 or even Rs. 20,000. But if you have an ordinary junior practising in the Privy Council in an ordinary case lasting a day, it would not cost you more than Rs. 4,000 or Rs. 5,000. You could not do a case like that, lasting a day, in India for less than Rs. 6,000 or Rs. 7,000, because nobody will be satisfied when appealing to the Supreme Court to have his case pleaded by a man who does not hold an eminent position at the Bar of the Court from which he has appealed. In my view, therefore, a Supreme Court at Delhi will not lead to any less expense.

Now, another argument has been advanced by the Honourable Mover as well as by all the speakers who have supported the Resolution, and that is the question of delay. I appeal to them as practical lawyers to say if the delay is not really due to the fact that the litigant does not want the case to be

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heard too early, for the simple reason that he has not got the money ; he delays because he wants time to send the money. The Privy Council has over and over again commented on the delay in presenting cases before the Privy Council. I do not know about other High Courts, but the Calcutta rules prescribe that if you appeal to the Privy Council you have to give security to the extent of Rs. 4,000 before the appeal is admitted, as security for costs. That is the first reason for the delay. I have known cases where application after application has been made for time to pay in this Rs. 4,000. That means delay. Then the matter goes to the Privy Council, and there again the litigant has to find money ; he delays sending money ; he sends it by dribblets to his solicitor, and naturally the case has to be kept back until the full amount is received.

THE HONOURABLE SIR MANECKJI DADABHOY : And do not forget the interest he pays to the sowcar on this Rs. 4,000.

THE HONOURABLE MR. S. R. DAS : Whatever it is, if a litigant desires to have the case heard soon, he could have it heard within a year after the appeal has been filed. In a matter in which I myself was interested, I have known a case disposed of within six months from the time leave to appeal was given, simply because in that case my client was very anxious to have the matter decided as expeditiously as possible ; he paid in the money immediately, he made an application for expedition ; the record was sent up at once ; he made an application to the Privy Council that it should be heard soon. Grounds were given why it should be heard expeditiously and the matter was disposed of within six months of the date when leave to appeal was given. The delay is generally due to the fact—and I do not blame the litigants, because after all litigation is costly and every body has not got ready money always—that they want time to get the money and send it to England ; and if you send up an appeal to the Supreme Court, the same difficulty will arise in providing the money. When we are talking of this question of delay, take the ordinary instance of an appeal from the subordinate court to the High Court itself. Will any practising lawyer here be surprised to hear that it sometimes takes two years before an appeal from a subordinate court is heard ? Is not there delay in the preparation of the paper book—considerable delay—because the litigant is waiting to get money and considerable time elapses before the paper book can be printed ? I have known cases in the Calcutta High Court and I have heard of other cases in other High Courts where there has been considerable delay between the time the appeal is filed and the time the appeal is heard. You will not get rid of this question of delay by getting a Supreme Court here.

Now, Sir, what is going to be the constitution of this court ? Is it going to be a glorified High Court or a court consisting of judges far superior to the High Court Judges whom we have now ? I should like to make it clear that I am casting no reflection on the High Courts here. We have at present in the High Courts the best possible talent available, and the High Courts do their work exceedingly well. But if you are going to have a Supreme Court, it is no use having the same calibre of Judges as you have in the High Courts. There is no satisfaction to the litigant to go in appeal from one judge to another judge of the same calibre ; you want men of greater eminence. Where are you

going to get them ? I do not suggest you have not got men in India who would be suitable for the Supreme Court, but what happens now ? Do you get in your High Courts as Judges men who are at the top of the profession ? Do they accept High Court Judgeships ? Do we not know cases of men who have got very good practice, who are great lawyers, who refuse to be appointed High Court Judges ? These are the men you have to get if you want men of higher calibre : and if you get these men you will not get them for Rs. 4,000 or Rs. 5,000 ; you will have to pay them very handsomely if you want to attract them to the Supreme Court ; and even then I doubt if you will be able to induce many of them to give up there very lucrative practice for the purpose of sitting on the Supreme Court.

Then there are other difficulties. If you have a Supreme Court, communal questions will arise. Are you going to appoint so many Hindus, so many Muhammadans, etc., or are you going to appoint Judges simply from the point of view of the merits of the persons concerned ? Will you be able to do so ? I am quite certain that communal questions will arise in the matter of appointments. Would you be satisfied with such a court ?

I ask the House to consider all these practical difficulties and then say whether it is advisable at the present moment to have a Supreme Court ? It may be that from the political point of view we are all anxious to have a Supreme Court ; but I beg this House not to allow the administration of justice to be influenced by political considerations. Do you want a Supreme Court for the purpose of deciding constitutional questions ? That is merely political. If you want to have one for the purpose of deciding constitutional questions, apart from other objections which have been raised, that at the present moment we have not got self-government, do you think we can afford it merely to decide constitutional questions ? Are there a sufficiently large number of constitutional questions which really require the appointment of judges to a court ? There may probably be one or two cases during a whole year. But that is quite apart from the question of the administration of justice. We want to deal with the question of a court deciding constitutional questions quite apart from a court which concerns itself with the administration of justice. The two things are entirely different, and from the point of view of administration of justice, I certainly as a practising lawyer would be very much opposed to the constitution of a supreme court in this country.

Objections have been raised as to the interpretation of the Hindu law by English lawyers. The Honourable Mover has complained that they have imported English opinions into the interpretation of Hindu law. Now, I remember a decision of the Honourable Mover, a really extraordinarily learned decision, in a case where the question of the validity of the marriage of a Sudra with a Christian woman came up for consideration. I have rarely read a judgment which so boldly went out of the rut of ancient Hindu law and made it fit into modern conditions. Now, what has the Privy Council done ? The Privy Council has brought, in its interpretation of the Hindu law, modern progress into consideration. But for the Privy Council there would be no advance in Hindu law, and Hindu law would have been where it was a hundred years ago. And I dare say that many of the orthodox Hindu lawyers will not agree with me, but I feel that we owe a great deal to the Privy Council for the progress we have made in the application of Hindu law.

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Somebody, I think the Honourable the Mover, complained that it has had a vitiating effect, that it was destroying the Hindu joint family system in this country. Well, I am not so certain that in these modern days of progress, the old Hindu law can with safety be applied without bringing into its interpretation the present modern conditions. We have before this House another Bill with reference to the registration of all partitions. We find a number of opinions from people, and I am glad to find that there are a large number of people who object to it, that registration should not be compulsory only on the ground that the proposed system of registration will prevent a large number of partitions, they feel that you must permit partitions and you must not insist on the old view that there should be as few partitions as possible. Now, under those circumstances, to suggest that the interpretation of Hindu law should be restricted to the interpretation as given by the Pandits a few hundred years ago is, I submit, not a correct view to take.

I have tried to deal with this question entirely from the point of view of a practical lawyer and have tried to avoid all political questions. Before I close, however, I feel tempted to deal with one point of view, I mean with one statement of my friend Mr. Chari. He said that some English Judges look upon Indian lawyers as pests. He adverted to his own experience. I am afraid I have had a little longer experience than my friend. I have appeared before every kind of Judge, and I certainly say that my experience has been otherwise. My experience has been that the Judges, whether Civilian, Barrister or Vakil, are apt to treat only those lawyers as pests who may make themselves pests.

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative): Sir, I wish to support this Resolution. I find that in the discussion many things have been said which really do not relate to the Resolution at all. There were many practical objections raised to the Resolution, but I think this is a stage at which we have to consider whether a Supreme Court is necessary, and whether it ought to be established in this country. That is the point, and in my opinion a Supreme Court is very necessary. The Resolution takes away no privilege which the Indian public enjoy at the present moment. If anything, it will confer very great benefits. It will give the defeated litigants the choice either to go to the Supreme Court or to the Privy Council. It has been asked to whom is this privilege given? My reply is that this privilege is given to the defeated litigant. It has been asked what benefit will it confer? I say the benefit is that the poor litigant defeated in the High Court will be able to seek a remedy in the Supreme Court here, whereas at present he cannot possibly engage lawyers in England and undergo all the expenses that are incidentally necessary.

Then it was asked, what was going to be the position of this Supreme Court? It was also said that its position would be incongruous, anomalous, and so forth. I humbly submit that the position of the Supreme Court will not be anything of that kind. It will be another edition of the Privy Council. We have the King represented here by the Viceroy, and as the King in England has his Privy Council, so the Viceroy here will have his Supreme Court. Why should not the Viceroy have a Privy Council of his own here?

SEVERAL HONOURABLE MEMBERS: Please speak up. We cannot hear you. Please speak louder.

**THE HONOURABLE MR. G. S. KHAPARDE :** All right, I will try to speak louder. It has been asked as to what position this Supreme Court will occupy. My reply is that it will be the Indian edition of the Privy Council now sitting in London. We have here the Viceroy to represent the King, and this new Court will be the Indian edition of the Privy Council. His Excellency the Viceroy here has his Cabinet in the shape of his Executive Council. To that Cabinet will be added a certain number of persons who will be judicially qualified to sit as Judges of the Supreme Court. All those people will form the Judicial Committee of the Executive Council of His Excellency the Viceroy. There is no incongruity, there is no difficulty whatever in that matter.

It has been said further that this Court will confer no benefit of any kind. My humble reply to that is that in the case of death sentences at present, there is no court of appeal at all. My Honourable friend Saiyid Alay Nabi pointed out that there is a police investigation in the first instance, then an investigation by a Magistrate, and then there is a trial before the Sessions Judge, and finally there is also an appeal to the High Court. . . . .

**THE HONOURABLE SAIYID ALAY NABI :** I am sorry, Sir, I never said that there is an appeal to the High Court. I did say that, as a matter of fact, a condemned man can appeal to the High Court.

**THE HONOURABLE MR. G. S. KHAPARDE :** I again maintain, Sir, that his point was that all the necessary facilities for the defence were available in this country and there was no case made out for the establishment of a Supreme Court. To that my reply is, that in England there is a Grand Jury ; there is an inquiry before the Mayor ; there is a commitment to the High Court, and thereafter a man convicted can go to the Privy Council or as it is called the House of Lords. So we are having nothing more than what there has already been in England for centuries.

Then again, Sir, as I pointed out, there is no appeal, really speaking, in a sentence of death. If a man is sentenced to death, the court which passes the sentence is not the Sessions Judge. The Sessions Court merely proposes that it thinks that the man ought to be hanged, and the proceedings are submitted for confirmation to the High Court, and it is the High Court really that gives the death sentence and after that, the poor man has no remedy at all. In India there is really no criminal court of appeal against a sentence of death.

It was further urged that the establishment of this Court will lower the prestige of the High Courts in India. It has not done so in England : it has not done so anywhere else. Why should it lower the prestige of the High Courts in this country alone ? It is the privilege, it is the prerogative of the Crown to be advised by lawyers, and the prerogative of the Viceroy should be that he should be advised by lawyers, I therefore think that there will be no kind of lowering of the prestige at all. Therefore, Sir, this Resolution from my point of view confers a great benefit on the poor litigant, and takes away none of the existing privileges. On the other hand, it provides a distinct remedy. In a recent case in Delhi, the accused has gone up to the Privy Council over the sentence of death and the accused is faced with some difficulty. All those cases, all those defects should go away. It has been suggested that it may happen that communal questions will come in and then the people will ask for Hindu Judges, Muhammadan Judges, Sikh Judges, and so on. I quite agree that in the

[Mr. G. S. Khaparde.]

beginning such a thing may occur. But the appointments will be made by His Excellency the Viceroy from among the most learned and most experienced. It has been asked who will be the Judges? I say there are so many retired High Court Judges, so many able lawyers that there is a wealth of legal talent in India which remains unutilised and His Excellency the Viceroy will be able to utilise that material. I do not attach any importance to delays. The case *Jarndyce v. Jarndyce* cited by my Honourable friend was a fictitious case which exaggerates the matter and makes it look worse than it is. That case we do not take as an authority in our courts of law. I have not yet heard any speaker point out the disadvantages that would accrue from the establishment of a Supreme Court in India, beyond probably that there will be more expenditure. But some more expenditure we do not mind. There is a Latin proverb that justice should be done even if the heavens fall; justice should be done no matter how much it costs. Nothing is too much to be paid for justice. We spend a good deal and we have got to spend a good deal more on the Navy, on the Air Force, and on the other forces in India. Why not spend a few lakhs more in securing justice? There will be no harm done to the country by doing that. So, I do not attach any importance to the financial aspect of the question; from the social aspect there is none, and from the political aspect there is everything to be gained. People will gain a great deal here, more especially the poorer classes who cannot afford to incur expenditure to go to England for the sake of justice. It has been said that this court will be equally costly and expensive. It might be very likely and would be. But in India there is a thing called charity, and many eminent lawyers will take up a case merely for the purpose of saving a life, which is a thing you do not hear of in England. Here there will be eminent lawyers who will put their services at the disposal of such poor people. The Court will be at Delhi; retired lawyers will be there and retired Judges of the High Courts; there will be a plethora of legal talent. For these reasons, I think that there is everything to commend this Resolution and nothing to detract from it. Therefore, I hope my Honourable colleagues will support it heartily.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay: Non-Muhamadan): So far, every Honourable Member of the House who has spoken on this Resolution to-day happens to belong to the legal fraternity including my Honourable friend, the Home Secretary, who told us that he once served as a Magistrate. I therefore hope that it will not be regarded as presumptuous on my part to speak on this Resolution and to tell the House what considerations influence me as a layman to accord my support to the Resolution.

The Honourable Mover has told us distinctly that he does not want to do away with the Privy Council so far as India is concerned. His main idea is to have a Supreme Court in the country to give the choice to the litigants as to which body to appeal to. The Honourable the Law Member questioned him in the course of his remarks as to whom he is going to give the choice to, the appellant or the respondent. I presume the Honourable Member will say he will give it to the appellant. The Honourable Mr. Das further pointed out that the Privy Council, as the supreme authority, will still possess the right even after the Supreme Court has given its decision, if it so chooses, to take up the case, which would mean that the litigants would be involved in still further

costs. May I point out to the Honourable Mr. Das that the same privilege exists in the case of the Colonies, and the Dominion of Canada, and yet as a matter of practice, the Privy Council does not think fit to call for papers in any case which the Supreme Court of any Colony or Dominion has decided upon...

THE HONOURABLE SAIYID ALAY NABI : Is there any authority for it ?

THE HONOURABLE SIR PHIROZE SETHNA : I should like to stand corrected by knowing any instances to the contrary. So far as I know it has not.

Another point which appeals to me as a layman lies in the fact pointed out to the House by the Honourable Mover, and not contradicted by anybody, although several lawyers have spoken, but on the contrary the fact was supported by my Honourable friend, Saiyid Nabi Alay.

THE HONOURABLE SAIYID ALAY NABI : Alay Nabi.

THE HONOURABLE SIR PHIROZE SETHNA : I beg his pardon, the Honourable Saiyid Alay Nabi, who said that although the Judges of the Privy Council are very learned lawyers in different branches of the law yet so far as Hindu law and even Muhammadan law are concerned, their judgments in many cases have been found to be unsatisfactory. If that is a point which is not disputed even by my Honourable friend, the Law Member....

THE HONOURABLE SAIYID ALAY NABI : I beg your pardon. I am very sorry for the interruption. What I said was, whatever may be the case, it may be ancient history, but since the reinforcement of the Privy Council.

THE HONOURABLE SIR MANECKJI DADABHOY : Does the Honourable Member know that some of the most important judgments on Hindu and Muhammadan law have been written by English Privy Council Judges and they have extorted respect and admiration in this country ?

THE HONOURABLE SIR PHIROZE SETHNA : I do not deny that. I shall come to the point of my Honourable friend, Saiyid Alay Nabi a little later. I say as a layman it appeals to me very greatly that the litigants may be allowed to go before Judges who in their opinion understand Hindu law and Muhammadan law better than some of the Judges of the Privy Council. That point of view appeals to me as a layman.

My Honourable friend, the Home Secretary, referred to this Resolution as having come up for the first time, in February 1925. May I remind him, as was pointed out by the Honourable Mr. Ramadas Pantulu, that this question has been engaging the attention of the Legislature ever since the reforms came into existence ? It was brought up for the first time by Dr. (now Sir Hari Singh) Gour, if I remember aright, on the 26th March 1921. The Resolution to which my Honourable friend, Mr. Haig, refers came up some years later. But my Honourable friend said that when the opinion was taken of the country at large it was found to be greatly against it. I am sorry....

THE HONOURABLE MR. H. G. HAIG : All I said about the opinion of the country at large was that it did not show identity.

THE HONOURABLE SIR PHIROZE SETHNA : I stand corrected, but I would like to quote the words of the then Home Member, Sir Alexander

[Sir Phiroze Sethna.]

Muddiman, who himself said that the opinions revealed the fact that there is a considerable backing in the country to this proposal. In fact, if we read those opinions we must come to the conclusion that it is a case of fifty fifty. That being so, the Resolution requires more serious consideration at the hands of Government than has been given both by the Honourable the Home Secretary and the Honourable the Law Member, in their speeches to-day.

Now, let me come to the point made by the Honourable Saiyid Alay Nabi and repeated by Sir Maneckji Dababhoy. He said that to-day conditions have changed. I do not deny that. I know Lord Sinha and Mr. Ameer Ali are of the Judicial Committee of the Privy Council. But I also know that they are not young men and that both these respected gentlemen can give 15, 20 or 25 years to my Honourable friend, Saiyid Alay Nabi in point of age that both these gentlemen will not be there indefinitely. The situation has improved for the present, but the proposal in the Resolution is for all time to come and not for the present only.

My Honourable friend Saiyid Alay Nabi introduced a very novel point. He said that a Supreme Court must not precede but should follow the attainment of responsible self-government. May I ask my Honourable friend if that condition was made precedent to the election of India as an original member of the League of Nations or was it made a condition precedent to our sending delegates to that body or to the Imperial Conference?

THE HONOURABLE THE PRESIDENT: Will the Honourable Member confine himself to the Resolution?

THE HONOURABLE SIR PHIROZE SETHNA: I bow to your ruling, Sir.

THE HONOURABLE SAIYID ALAY NABI: On a point of personal explanation. What I said was that the Supreme Court was established in Canada and in Australia after self-government was established there. I did not refer to any other country except those mentioned in the Resolution of the Honourable Mover.

THE HONOURABLE SIR PHIROZE SETHNA: I say, Sir, that the appointment of a Supreme Court before the attainment of self-government will pave the way earlier to the attainment of that goal.

Then one or two remarks fell from my Honourable friend the Law Member. He compared the fees charged by the leading juniors at home with the fees charged by the senior members of the Bar at Calcutta and Bombay. If he had compared the fees charged by Sir John Simon or Mr. Upjohn and others of the same class with the fees which my Honourable friend would himself have charged when he was practising at the Bar or what others in the same rank as himself are charging to-day, then I say the comparison would be fair, not the comparison that he drew. Then again my Honourable friend asked, are you going to convert the Supreme Court into a glorified High Court? My answer is just this. Are the Supreme Courts in the Dominions and in the self-governing Colonies only glorified High Courts? Is it not a fact that there are these Supreme Courts and is it not also a fact that although the people there have the privilege of sending cases to the Privy Council in preference to the Supreme Courts that privilege is hardly ever exercised? There is therefore nothing wrong to my mind in appointing a Supreme

Court in India, and I strongly support the motion of my Honourable friend, Sir Sankarn Nair.

The Council then adjourned for Lunch till a Quarter to Three of the Clock.

The Council re-assembled after Lunch at a Quarter to Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE SIR SANKARAN NAIR : Sir, my first argument was that there was a denial of justice on account of the great expense and delay involved in the case of appeals to the Privy Council. The reply was that even if a Supreme Court is established, for instance in Delhi, the cost would be just the same, at any rate there will be no appreciable difference because the lawyers in India have to be paid the same fees as may be now payable in London. I am afraid, Sir, that those who put forward that argument are not aware, have not got the actual experience which certainly we in Madras have when new courts are constituted. We know that when new courts, district courts, sub-courts and Munsif's courts are constituted, men from the older courts rush to those courts and settle there and do the work. It may be in very few cases that men may have to be called from an older court, but the real want is supplied by the inrush of men who have practised in the older courts. They forget further that even at present a man, even though there is a Privy Council, has to pay his own lawyer in India to prepare his case, and he incurs that expense. Furthermore, the solicitor's fees are heavy in England, it is often not the counsel but it is really the solicitor in England who costs more. All those expenses for solicitor's costs will be saved if there is a Supreme Court here ; and then there are the costs incurred in the High Court for the preparation of the record ; there is the security for costs which probably will all be saved in case of the institution of this court. Then there is the argument which the Honourable Mr. Das used which I thought was a strong argument in my favour. "What is the delay due to", Mr. Das asked ; and he said, I believe he is right, that in a good number of cases, in the great majority of cases in fact, the delay is due to the reason that a litigant has to borrow money in order to defray the expenses of litigation, and it is because he has to borrow this money, the case is protracted for such a length of time ; he has to borrow money and send it to his lawyers in London. Now is that not the strongest argument which one can find in my favour ? Because if now the litigation is conducted at so much cost that a man has to borrow money, is that not a strong argument then for the constitution of a court here so that he may have to borrow, if at all, less money, and is it not a further argument in favour of this, that many men are choked off now, many appeals are not filed as they are not able to carry on those appeals because they cannot find the money ? I submit that far from that being an argument against me, the argument from delay is in my favour. Then that leads to the other argument which Mr. Haig put forward. He said, "For Heaven's sake, do not increase litigation and bring about a state of things when litigation shall destroy the subject-matter." Yes, the subject-matter is lost to the litigants ; but what is it due to ? It is not due, as Mr. Haig says, to increasing litigation : it is due to the increasing cost of litigation. If you increase the cost in certain cases from Rs. 1,000 to Rs. 10,000, that means the ruin of the client, whereas the increase of the litigation will go along with the progress of civilization, because there are so many new wants, so many new transactions which are entered

[Sir Sankaran Nair.]

into that sort of increase of litigation is not to be deprecated. What is to be deprecated is the increase of the cost of litigation.

And what I am asking this Council now is to see that, if possible, the cost of litigation is decreased and not to go increasing it.

Then the Honourable Mr. Das put forward another argument. He said "You say that the poor litigant finds it difficult to get a remedy because the cost is so prohibitive and the Privy Council is a bar to the poor man getting his remedy." Here let me correct a gross misapprehension on the part of my Honourable friend Sir Maneckji when he read out a passage isolated from the rest of my speech. What I said was that it is the rich man alone who could go to the Privy Council and get his appeals tried there, and that the cost of the litigation stood in the way of the poor man going there : in that sense therefore the Privy Council acts as a bar to the poor man, while it enables a rich man to go there and get his appeal tried there, and in that way the Privy Council is an institution for the benefit of the wealthy man as against the poor man. That the Privy Council decides in favour of the rich or usually favours the rich as against the poor is only in the imagination of my friend Sir Maneckji ; that was not my argument at all.

Now coming to the Honourable Mr. Das who asked me : "Well, you say you want to give an alternative, but to whom ? To the appellant or to the respondent. The appellant may be a rich man and the respondent may be a poor man. How do you say then that you are meeting the case of that class of persons, the poor respondents ?" My first observation on this is that it is not a fair argument ; when I put forward a remedy for a class of cases in which justice is not administered at present it is certainly not an argument which should be put forward on behalf of the Government that there are other cases where my remedy is no remedy. Besides I can easily meet that point. In Madras we have what is called concurrent jurisdiction. You may file a suit in the Small Cause Court or in the High Court ; and what the High Court does is this that if you ask for leave to file a suit in the High Court when you could have filed it in the Small Cause Court, you do not get it. I do not know what the rule now is, but that was the rule when I was there. Similarly, if you go to the Privy Council, instead of going to the Supreme Court, the Privy Council may say : "This is a matter which had better be tried in India, and we will not therefore allow it to be tried here." If it is a proper case to go before the Privy Council, they will say : "We will entertain it". If it is not a proper case to go before the Privy Council they will say : "No ; you will have to go to the Supreme Court ; that is the proper place for you to get your remedy." And where the Privy Council decides in favour of the appellant in cases which might have been decided by the Supreme Court, they may say they will refuse costs ; they may say : "You should not have come here ; you should have gone to the Supreme Court in India ; why did you come here ? We will give you a decree in appeal here, but we will not give you costs." That is the answer and I believe that is a conclusive answer to what the Honourable Mr. Das put forward.

Then there was another argument, I believe, which was used by Mr. Haig. He said : "What about the expense which the Government will have

to incur? The public revenues will suffer if you go on like that." First of all, Sir, you have to consider the fact that the litigants are saved so much expense; that has to be taken into consideration. Then there is this further point. I do not know whether Mr. Haig knows that some time ago the question was considered by the Government of India and it was then found that the costs of civil litigation were paid by the litigants. The Government no doubt said: "You are taking only civil litigation into account; you must also take criminal litigation, and if you take the two together, then the receipts from litigation do not cover the cost of the whole thing." I do not know how matters stand now and whether an inquiry if made now as to the cost of litigation will establish the truth of that contention. Therefore, before Government complain that the constitution of a Supreme Court will be such a great loss to the Government, that matter must be gone into and the questions settled.

I have very little more to say. An argument was used—the Honourable Sir Maneckji Dadabhoy as usual quoted me as saying what was really a figment of his own imagination and said with great vehemence and a great show of indignation with regard to sedition cases: "What is the meaning of charging the Privy Council with partiality? They are thoroughly impartial." My Honourable friend waxed very eloquent over the matter, but the fact is just the other way; my complaint with the Privy Council was that they will not go into these matters. In Mrs. Besant's case and in cases from the Punjab the Privy Council said: "We will not go into these questions because these questions should be settled locally." If the Privy Council would only go into these questions, it would be a very good thing. I never said they were not impartial or anything of that sort. What I said was that they would not go into these questions at all and that therefore it was all the more necessary that you should have a Supreme Court before whom you could take all these things for their opinion. Sir, I have got nothing more to say.

THE HONOURABLE MR. H. G. HAIG: Sir, the Honourable the Law

Member has dealt with the arguments that have been  
3 P.M. advanced in favour of this Resolution in such a convinc-

ing way and with such a thorough practical knowledge of the details that it leaves very little for me to say. I understand from the last speech of the Honourable Mover, that he thinks that if Government incurs an expenditure of Rs. 10 or 20 lakhs—I do not know what the cost may be, and no one has any very definite idea—it does not matter provided it could be shown in some way that the cost of civil litigation is generally covered by the receipts. But I may point out that, in any case, how that matter stands I am not sure, I cannot inform him of the facts at the moment—it means an immediate increase in the burdens on the tax-payer.

And when we talk about making litigation cheap to litigants we have to be very careful, I think, to see that we do not impose further burdens on the tax-payer.

One point struck me during the debate, and that was that, while we started with sober statements of the reasons and arguments in support of the motion, as the debate developed—and I hope it was because those arguments were very largely met—there seemed to be more reliance placed on the appeal to sentiment.



[Mr. H. G. Haig.]

My Honourable friend opposite, Mr. Ramadas Pantulu, for instance, while recognising fully the practical objections to the proposals, nevertheless stated his intention of supporting the Resolution on grounds which I think must have been to some considerable extent sentimental. He wished that the functions of this new Supreme Court should be very strictly limited. Now, I can understand the position of my Honourable friend the Mover who assigns to the Supreme Court certain important functions and wishes to appoint Judges to perform them, but I find it very difficult to appreciate the point of view of an Honourable Member who wishes to limit those functions until they become very narrow, and yet wishes to set up this court. Sir, any Honourable gentleman who may indulge in sentiment would naturally wish to avoid the stigma of his sentiment being described as cheap, but I think this House should be careful not to indulge in sentiment which is likely to be so dear. I would urge the House, therefore, not to be carried away by any feeling of sentiment, to create half a dozen, or it may be more, sinecures for the performance of duties which would be very limited in character.

THE HONOURABLE THE PRESIDENT The question is :—

“That the following Resolution be adopted.

‘This Council recommends to the Governor General in Council to take early steps to secure that a Supreme Court is established in India with power—

- (a) to interpret and uphold the constitution ;
- (b) to act as a court of final criminal appeal against all sentences of death .
- (c) to act as a revising court in specified serious cases ;
- (d) to hear civil appeals now heard by His Majesty's Privy Council ; and
- (e) general to carry out the work at present entrusted to His Majesty's Privy Council ;

provided that such court shall not affect His Majesty's prerogative safeguarded in the constitutions of Canada, Australia and South Africa ’.”

The Council divided :

AYES—15.

Desika Chari, The Honourable Mr. P. C.

Khaparde, The Honourable Mr. G. S.

Mahendra Prasad, The Honourable Mr.

Mukherjee, The Honourable Sriji Loke-  
nath.

Obero, The Honourable Sardar Shivdev  
Singh.

Padshah Sahib Bahadur, The Honourable  
Saiyid Mohammed.

Ram Saran Das, The Honourable Rai  
Bahadur Lala.

Ramadas Pantulu, The Honourable Mr.  
V.

Rama Rau, The Honourable Rao Sahib  
Dr. U.

Rampal Singh, The Honourable Raja Sir.

Ray Chaudhury, The Honourable Mr.  
Kumarsankar.

Sankaran Nair, The Honourable Sir.

Sethna, The Honourable Sir Phiroze.

Seth, The Honourable Rai Bahadur Nali-  
ninath.

Sinha, The Honourable Mr. Anugraha-  
Narayan.

## NOES—25.

<b>Akram Husain Bahadur</b> , The Honourable Prince A. M. M.	<b>Hooton</b> , The Honourable Major-General Alfred.
<b>Alay Nabi</b> , The Honourable Saiyid.	<b>McWatters</b> , The Honourable Mr. A. C.
<b>Bell</b> , The Honourable Sir John.	<b>Misra</b> , The Honourable Pandit Shyam Bihari.
<b>Berthoud</b> , The Honourable Mr. E. H.	<b>Muhammad Buzlullah</b> , The Honourable Khan Bahadur.
<b>Brayne</b> , The Honourable Mr. A. F. L.	<b>Natesan</b> , The Honourable Mr. G. A.
<b>Charanjit Singh</b> , The Honourable Sardar.	<b>Stow</b> , The Honourable Mr. A. M.
<b>Commander-in-Chief</b> , His Excellency the.	<b>Suhrawardy</b> , The Honourable Mr. M.
<b>Corbett</b> , The Honourable Sir Geoffrey.	<b>Swan</b> , The Honourable Mr. J. A. L.
<b>Dadabhoy</b> , The Honourable Sir Maneckji.	<b>Tek Chand</b> , The Honourable Diwan.
<b>Das</b> , The Honourable Mr. S. R.	<b>Tudor-Owen</b> , The Honourable Mr. W. O.
<b>Froom</b> , The Honourable Sir Arthur.	<b>Umar Hayat Khan</b> , The Honourable Colonel Nawab Sir.
<b>Habibullah</b> , The Honourable Khan Bahadur Sir Muhammad, Sahib Bahadur.	<b>Wacha</b> , The Honourable Sir Dinshaw.
<b>Haig</b> , The Honourable Mr. H. G.	

The motion was negatived.

### RESOLUTION *RE*. REPORT OF THE INDIAN SANDHURST COMMITTEE.

THE [HONOURABLE SIR PHIROZE SETHNA (Bombay : Non-Muham-madan) : Sir, I beg to move :—

“ That this Council recommends to the Governor General in Council to urge on the Secretary of State for India the necessity of taking prompt action in pursuance of the recommendations made in their Report by the Indian Sandhurst Committee.”

Sir, before I proceed with what observations I have to make in support of my Resolution, I may be allowed with your permission to tender to two of my Honourable Colleagues in this House my thanks for withdrawing their motions similar to mine. The Honourable Saiyid Alay Nabi was good enough to withdraw his motion in my favour, and although my Honourable friend Seth Govind Das drew a higher place in the ballot for to-day's agenda, he promised not to move his motion even if present. Both members have done so because I had served as a member of the Indian Sandhurst Committee, and I would like to assure them that I greatly appreciate the favour.

Among the many important questions that have engaged the earnest attention of this House and of the Legislative Assembly the question of further constitutional advance, and the question of national self-defence, have been the most outstanding. The mutual intimate connection of these two questions has been keenly realised and in the very first Session of the Legislative Assembly a series of Resolutions were adopted all designed with a view to enabling India to undertake the responsibility of her own defence in an increasing measure, so that she might be able, at the earliest possible moment, to grow into the full stature of a self-governing member of the British Commonwealth. Government appointed two Committees, namely, the Auxiliary and Territorial Forces

[Sir Phiroze Sethna.]

Committee early in 1924 and, secondly, the Indian Sandhurst Committee in June 1925. The first Committee submitted its Report on 23rd January 1925, and the second in November 1926. The Auxiliary and Territorial Forces Committee was presided over by Lieutenant-General Sir John Shea, Adjutant General in India, whereas the Chairmanship of the Sandhurst Committee was held by that very capable and efficient officer Lieutenant-General Sir Andrew Skeen, Chief of the General Staff.

Now the most important fact about the Reports of both these Committees is that they are unanimous. All the members of the Committee, whether Indians or Europeans, soldiers or civilians, officials or non-officials, all are unanimous in the recommendations they have made. This is a feature which is, I am afraid, rare in the history of the Reports of either Commissions or Committees.

THE HONOURABLE SIR MUHAMMAD HABIBULLAH (Member for Education, Health and Lands): The Lee Commission.

THE HONOURABLE SIR PHIROZE SETHNA: I said rare. I did not exclude the Lee Commission, but it is a feature which is bound to invest the Reports, not only with exceptional but, I believe I shall be justified in saying, with almost compelling weight and authority. The value of these Reports must further be enhanced by the consideration that the recommendations they embody have received the approval of high military officers of the position and standing of Sir Andrew Skeen and Sir John Shea. I am anxious that this House and Government, far more than this House, should realise, first that the recommendations of these two Committees refer to a matter which is almost vital to our national growth and progress, and on which our feeling is not only one of keenness but of urgency, and secondly, that they possess a weight and an authority which must necessarily arise both out of the satisfactory personnel of the Committees, as was evidenced by the observations in the Press on both the occasions, and of their unanimous character. The Report of the Auxiliary and Territorial Forces Committee, as I have said, was submitted as far back as the 23rd January, 1925, and Government's decision was made public after as long as two years and seven months, or to be precise as late as the 20th day of this month. The delay in the matter was so greatly resented that, as the House is aware, the Legislative Assembly felt itself justified in expressing its utter dissatisfaction at the attitude of Government by voting a cut of Rs. 1,000 in the Demand under the head "Army Department" at the last Budget Session.

As regards the report of the Indian Sandhurst Committee, Government seemed at one time inclined not even to publish the Report until His Majesty's Government had formed their conclusions. It was however published on 1st April last after more than four months from the date of its submission, but not without what is called a "Foreword" and a very ominous "Foreword" it is. In it Government state that any conclusions they might form on the Report must necessarily take account of certain factors of which the Committee could not, by its terms of reference, undertake a complete survey. For example, they point out the problems of recruitment and training of commissioned officers are essentially an Imperial concern and any proposals reacting on them will

receive close scrutiny by His Majesty's Government. Further, they state that, when dealing with any scheme of increasing Indianisation of the Army they must leave themselves free to consider whether the basis of that scheme offers the sure stable line of advance towards the creation of a Dominion Army, or whether alternative methods which did not fall within the Committee's terms of reference might not more profitably be explored. The Government therefore state that the Committee's Report will be used as a starting point for discussions with His Majesty's Government. Did they ever hint at any time before or after the appointment of the Indian Sandhurst Committee that such a procedure would be necessary or was even contemplated? Now a Foreword by Government to a Committee Report is something most unusual, and therefore the public view this Foreword with a certain degree of suspicion. The public verily believe that it is an afterthought designed by Government as a safeguard to shield them if they want to whittle down the unanimous recommendations of the Committee.

This, then, is the position. The Government of India will carry on discussions with His Majesty's Government on the basis of the Report. When the discussions are completed, they will form their own considered views and submit them to His Majesty's Government. And we are told by the Secretary of State in his speech in the House of Lords on the 30th March last that he proposes to invite a Committee of Imperial Defence to consider the problem of Indian defence as a whole, and to examine incidentally, after receiving the Government of India's views, the Report of the Auxiliary and Territorial Forces Committee and the Report of the Sandhurst Committee in relation to those wider aspects of military policy which they alone, His Lordship says, are competent to appraise. Thus, the Report of the Sandhurst Committee has yet to undergo three different processes, first the process of discussion with His Majesty's Government, secondly, the process of final formulation of views by the Government of India and, thirdly, the process of consideration from the point of view of Imperial policy by a Committee of Imperial Defence. It is difficult to say over how long a period this whole operation will extend. It must however be obvious that, having regard to the fact that the wheels of Government move very slowly, too slowly at times, it cannot be a short period.

And here I would like to refer to the speech made by His Excellency the Commander-in-Chief less than a week ago at the other place also on a Resolution for giving effect to the recommendations of the Indian Sandhurst Committee. His Excellency taxed the Committee itself for taking as long as 16 months to submit their Report and he asked: "How could Government be expected to settle in about one-third of that time issues affecting the safety of India and of the whole Empire."

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF:** I would like to say that I did not "tax" the Committee. I stated that the period they took was absolutely right. I quite agreed that it was not unreasonable they should have taken 16 months in going into the matter thoroughly. I made no complaint and did not tax the Committee on that account.

**THE HONOURABLE SIR PHIROZE SETHNA:** I am much obliged to His Excellency the Commander-in-Chief for the correction. I refer to what I saw in the Press. The personnel of the Committee was announced in June

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1925. The Committee met for the first time in August 1925 and the fixing of the date for the first meeting was not in the hands of the Committee. The members, both official and non-official, were not prepared nor were they expected to sit continuously. Moreover, there were as many as 122 witnesses examined and it was also thought necessary to send a Sub-committee all the way to England, France, Canada and the States which took up nearly 4½ months of our time. His Excellency further pointed out that we might have taken even longer were it not for the fact that Government placed at the disposal of the Committee the full time services of so able an officer as Mr. Burdon. I will yield to none of my colleagues on the Indian Sandhurst Committee in my appreciation of the invaluable help rendered to the Committee by Mr. Burdon, and I wish publicly to testify to the outstanding ability of that very capable officer. If his services were invaluable it was because of his intimate and first-hand knowledge of the subject we had to handle and which he had acquired in his capacity of Secretary to the Army Department, an office he filled with so much distinction. But I do say that, even if unfortunately for the Committee Mr. Burdon were not a member of the Committee, even then the preparation of our Report would not have taken a day longer than it did. Government were good enough to place at our disposal the services of Major A. F. Rawson Lumby as Secretary. He had previous experience having acted as Secretary of the Auxiliary and Territorial Forces Committee and because he accompanied the Sub-committee of which I was a member. I am able to say on behalf of Mr. M. A. Jinnah, Major Zoravar Singh and myself that Major Lumby proved himself a very useful Secretary and he rendered us splendid help in the preparation of the Sub-committee's Report. Now, Sir, His Excellency asked if the public would not wait for a third of the time that the Committee took for the Government's decision? I may respectfully point out that a third of the time has already gone past. In fact more than half the time has gone past. The Report was submitted in November last and we are now in August. What the public cannot understand is, why it is that Government almost invariably display such inordinate delay whenever it is a question of advancing Indian interests, and why on other occasions matters are rushed through with undue haste and precipitancy as witness the very short time within which effect was given to the recommendations in the Lee Commission's report.

Now, Sir, I wish to refer to the statement made by Lord Birkenhead in his speech in the House of Lords to which I have already referred. His Lordship complained that :

"Throughout all the criticisms on the army administration in India he detects the belief that those matters are primarily of concern to India alone, that there is no call on His Majesty's Government to participate in them, that any action by His Majesty's Government in this sphere is a kind of bureaucratic interference from Whitehall".

Then His Lordship observes, and I am quoting his exact words :

"All these questions whether they relate to interchange of reinforcements or to the spread of military training in India or to the Indianisation of the Indian army can only be handled with the necessary degree of success if they be brought under comprehensive survey by an authority competent to examine them from the broadest Imperial view point. It is not enough to approach them parochially."

When His Lordship suggests that our Indian national outlook on the subject of India's defence is a parochial outlook, that the question of the spread of military training in India or the question of the Indianisation of the army must be approached from what he calls the broadest Imperial view point and not from the narrow parochial Indian point of view or from the point of view of the early attainment of responsible government, then I feel bound to enter my emphatic yet respectful caveat. If such an extraordinary claim were advanced by Lord Birkenhead or any other member of His Majesty's Government in the case of the Dominions, we can easily imagine what reply the Dominions would give. True, India is not yet a self-governing country, but it is one in the making, and the military problem of the country cannot therefore and ought not therefore to be divorced from the vital consideration that it is the problem of a country to which responsible self-government has been promised and which it hopes to attain in the near future.

No one contends that in the existing circumstances of the case and having regard to the transitional character of the present situation with which we are faced the Imperial point of view should be ignored and only the Indian point of view should be considered, and I maintain that the recommendations of the Indian Sandhurst Committee are not in the least vitiated by any such defect. I go further and say that a Committee which had for its Chairman so distinguished a military officer as Lieutenant-General Sir Andrew Skeen, and such a cautious official as Mr. Burdon, could not possibly have ignored the Imperial point of view and also that if the Imperial point of view were ignored, there was nothing to prevent the Indian members from making recommendations which might have been regarded as radical and even revolutionary. The legitimate fear in such cases is not that the Imperial point of view will be ignored, but that due weight and consideration may not be given to the Indian point of view.

Then, again, Sir, much depends upon your conception of what this Imperial point of view is to which Lord Birkenhead attaches so much importance. If the conception of that point of view involves the permanent or prolonged inferiority or subordination of India in what is now-a-days the fashion to call the Commonwealth of Nations, it is a conception which is bound to make you antagonistic or at any rate indifferent to the true interests of this country, and we can never accept such an unjust and false Imperial point of view. No solution can be acceptable to us that is not based primarily upon the full recognition of India's interests, and that does not aim at making Imperial interests only secondary to those interests. His Lordship has said that it is only a Committee of Imperial Defence which can be competent enough to consider all these questions from what he calls the broadcast Imperial view point, but the Indian public cannot have any confidence whatever in that Committee for the good reason that there will be no Indian serving on it and there is no guarantee that India's view point will be adequately or sufficiently represented and considered by the Committee, or that any genuine attempt will be made in its deliberation and discussions to give due weight and importance to the Indian point of view. I have dealt at some length with the statement made by Lord Birkenhead for the reason that it has caused very great alarm in the country, and it is feared that all this is but a prelude as to what

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we may expect as the decisions of Government on the Report of the Sandhurst Committee.

The time at my disposal is not sufficient to enter into all the details of the recommendations. They are by now so well known to you. I will only refer to the most important, and that is the recommendation regarding the establishment of a Sandhurst in India whereby by 1933 the College may be ready to receive and train for commissioned ranks 100 cadets and that by 1952 half the total cadre of officers in the Indian army will consist of Indians. It is no exaggeration to say that the whole country has accepted the Report with great satisfaction.

No report can be unanimously acceptable in all details. There are bound to be differences of opinion, but the differences of opinion in regard to this Report are only in regard to some minor points. Some of these minor matters were referred to by the Deputation which waited upon the Commander-in-Chief and which I shall presently refer. If there is any reference to such minor matters in the course of the debate to-day, I will deal with them in the course of my reply. The Deputation I refer to consisted of Indian officers holding the King's Commission and the Viceroy's Commission which, under the leadership of our Honourable and gallant colleague, the Honourable Nawab Sir Umar Hayat Khan, waited upon His Excellency the Commander-in-Chief a few days ago. The Deputation heartily endorsed the recommendations which I have just now mentioned, but they even went further and expressed their surprise that the period within which half the number of officers are proposed to be Indians was not shortened to 15 years. Are these unanimous recommendations of the Committee to be scrapped or turned down? I do hope, Sir, nothing of the kind will be done, for such action would give a serious blow to the confidence of the people in the good intentions of the Government. Such action would help to strengthen the belief which is prevalent in certain quarters that the real policy of the Government is not to further the ideal to which they pledged themselves in the dark hours and during the exigencies of the War, but to prolong as indefinitely as possible the period when that ideal can come near fruition. The general feeling is that the forces of reaction and of Imperialism such as existed towards the end of the 19th century and the first few years of the 20th century are seeking to reassert themselves and to regain their former ascendancy. This faith will be deepened and strengthened if the proposals of the Indian Sandhurst Committee are thrown out, and the military policy of the Government continues to move in the same old groove of unjustifiable caution and distrust. There may be difficulties but they are due to the policy of the Government themselves and they must be boldly faced. As Sir Frederick Whyte has rightly observed in his book on "Asia in the 20th century":

"There is no doubt that if the Government had made a more serious and sustained attempt to Indianise the Civil Service and the Army, the problem of Indian Home Rule would not encounter so many serious difficulties as those which confront it to-day".

We have therefore to make up the leeway and also to advance. The Committee's recommendations are made after a full consideration of all the facts that were presented to them. They have put forward a scheme which

takes account of all difficulties, strikes the golden mean and provides a solution which is as much free from extreme or undue moderation as it is from thoughtless extremism. Surely a scheme the effect of which will be that only after 25 years, half the total cadre of officers in the Indian Army will be Indians cannot be said to be extreme, extravagant, incautious or revolutionary.

Sir, the Report of the Committee is in the hands of the public, but there is a serious omission in this Report, namely, the exclusion of the Sub-Committee's Report, particularly the Report of the Sub-Committee which went all the way from India to visit military institutions in England and France, at Kingston in Canada and West Point in America. The other day in another place the Secretary to the Army Department, when questioned about it, said that the Sub-Committee's Report was not published because the request for such publication was made by only one member of the Committee. I am glad to learn the Army Secretary only two days ago at the same place corrected himself and said, that it was the full Committee that had asked for the publication of the Sub-Committee's Report and not only one single member as he had observed on the previous occasion. In answer to a further question the Army Secretary gave it out that the Sub-Committee's Report was not published under the orders of the Secretary of State. I say, Sir, that if the Secretary of State, and at his request the Government of India, have thought it right to put in a Foreword to the Report they should also, in all fairness to the Committee and in all fairness to the general public, have given the reasons as to why they have not published the Sub-Committee's Report. The full Committee have passed certain strictures in their Report which is published; we fully explain and justify those strictures in the Sub-Committee's Report, and it is only fair to us, as also to the general public, that the same be made known widely. In the full Committee's Report we refer to the officer appointed as official guardian to the Indian cadets at Sandhurst. In the Sub-Committee's Report we have explained why in our opinion the choice made was unhappy, that appointment was unsatisfactory, and that this officer was perhaps responsible for more harm than good. Take again another instance. We were told that an outside lecturer once addressing both British and Indian cadets at Sandhurst observed in the course of his lecture that because of the system of Indianised units, no British boy would be liable to serve under the command of an Indian. When we were told this, we asked the India Office for an explanation. The India Office said they knew nothing about this lecture. Imagine therefore our astonishment and surprise when later we discovered that this outside lecturer was no other than an official of the India Office itself holding the rank of Colonel in the Army. from which we would not be wrong in inferring that what he stated at that lecture was not only his own opinion but that of the higher authorities as well and conveyed with their knowledge and consent. Are these not good enough reasons, Sir, why the Sub-Committee's Report should be made public? And I say that the public should not rest content until this Report has been placed in their hands.

To return to the unanimous recommendations made by the full Committee, I may ask what then is the duty of the Government of India in the matter? To my mind that duty is plain. The Government of India must act as the spokesmen and as the exponents of the Indian points of view, of Indian aspirations, feelings and hopes and at the same time of



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their fears and misgivings. They must endeavour to see that the Home Government do not tinker with the proposal, that they approach it in a spirit of liberal and trustful statesmanship, and that the unanimous recommendations of the Committee are given due effect to, and to point out that the rejections of these proposals would give rise to serious discontent in this country. The Government of India, I hope, will take up this strong attitude; and if they do so they will be doing their duty by the Indian people with the fullest regard for the interests of the Indian people. Reforms, if given, must be given promptly: the same reforms, if unduly delayed, will not provoke the same enthusiasm but on the contrary they will be regarded as inadequate and unsatisfactory. Many an untoward development arises in the relations of the Government and the people because of this truth not being fully recognized.

To conclude, Sir, I would say that it would be little short of a grave misfortune if the considered and unanimous proposals of the Committee are whittled down, and if one of the root-causes of Indian discontent is still allowed to rankle in the minds of the Indian people. I sincerely hope Government will fully realise the significance of the matter and leave no stone unturned to meet the views and wishes of the people. The matter is of great importance. It is of great urgency, and I do trust that Government will wholeheartedly and readily respond to the call for prompt action in approving and giving effect to all the recommendations of the Committee.

Sir, I move my Resolution.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: (Punjab: Non-Muhammadan): Sir, I rise to support the Resolution. Under modern conditions India is no longer an isolated country and is no longer surrounded by countries unarmed with modern military weapons. In the interests of the defence of India and in the wider interests of the defence of the Empire, as a whole, it is now absolutely necessary that every unit of the Empire should be self-sufficient in the matter of defence. In times of crisis India should be in a position, without expecting help from outside its confines, to defend herself. There is enough first class military material among the 320 million of people of India. The so-called military classes of India from among whom the military authorities at present recruit the Indian Army, namely, the Rajputs, the Jats, the Mahrattas, the Gurkhas, the Sikhs, and others who number between 40 to 50 millions, have military traditions at their back simply because the recruitment of the army is confined at present to these castes and tribes. A certain number of officers can certainly be supplied by these classes. But these classes are all of them very backward in education. The percentage of literacy among them is indeed very low. They are as a class quite suitable for recruitment as sepoys in the rank and file of the Indian Army. But for officers who are expected to lay down schemes of military strategy and who are to employ military tactics of a superior order in times of necessity, we require a much higher standard of education and intelligence. This higher type of educational fitness and intelligence is available to a much larger extent among the Indian intelligentsia and among the professional and business classes of men. If I rightly recollect it has been well said by H. E. Sir Malcolm Hailey, the Governor of the Punjab, in his evidence

before the Skeen Committee that a very large number of men can be found among the professional and business classes who are quite fit to discharge efficiently the duties of an army officer. The professional and business classes of the Indian people are in my humble opinion quite fit to take to a military career. It is only the Government policy of recruiting the army from certain castes and tribes alone, and the administration of the Indian Arms Act which has disarmed the entire mass of the population, that has created an artificial division between the so-called martial and non-martial classes. In pre-British times many of the military officers who have made their mark in Indian history were recruited from the present day non-martial classes. General Hari Singh Nalwa who conquered the Afghans. General Mohkam Chand, and Dewan Sawan Mal, were all Khattris and Misser Beli Ram, another famous General of Maharaja Ranjit Singh was a Brahmin. There are instances of many other famous Generals in the history of India who did not belong to the present day so-called martial classes. I am quite sure that if equal opportunities for military training are given to all classes of people as they used to be given in the times of the Moghals, the Mahrattas, and the Sikhs, they will prove equally efficient in the discharge of the military duties. Let the tests of entry into the military profession be made as high as they can be. I am not in favour of lowering that test, but all those who satisfy that test should without distinction of caste or class be given an equal opportunity to enter the military profession. Our educational system should be so reformed as to fit students for receiving military training, and the cost of the military training should be reduced to such an extent that it should suit the pockets of an average middle class parent. But, Sir, to enable a larger number of Indians to obtain military training, it is necessary that a Military College on the model of Sandhurst should be opened in India. This step is necessary, because at present the higher cost in England, and the longer absence of boys from their parents in a foreign country with all its risks, stand in the way of a sufficient number of Indian students taking advantage of the facilities provided at Sandhurst. There is still another reason why a Military College is necessary in India. In times of war, when communications are more or less closed, it is very difficult for India to obtain new officers from England; and if the theatre of war happens to be near to the frontiers of India, the absence of a Military College in India would be a very serious handicap in the way of this country defending herself. Even in the last Great War when fortunately India had no war on her own frontiers the necessity arose of hurriedly setting up three cadet corps colleges in India at Quetta, Indore and Wellington.

It is, therefore, absolutely essential that, before the next great war breaks out, and no one can say when it will break out, we should complete arrangements for the military training of officers in India. Up to the present moment Indian officers holding the King's Commission are employed only in the Infantry and the Cavalry. There is no reason why they should not be eligible for appointments in the Artillery, the Signals, the Tanks, the Engineering, and the Air Arms of the Army as well. India has produced on the civil side some of the best engineers. There is no reason why it should not be able to produce equally good military engineers. In the last Great War, several Indians did excellent work in the then Royal Flying Corps; some of them even won distinguished Military Crosses. This shows that, if opportunities are given,

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Indians are capable of holding their own quite on a par with any other people on the face of the earth.

I would therefore suggest that as recommended by the Skeen Committee—

1. A progressively larger number of Indians be recruited in the military service.

2. Steps should at once be taken so to reform the Indian educational system that it may prepare students fit to receive military training.

3. Steps should at once be taken to open military colleges and military schools in India.

4. Steps should be taken immediately to appoint Indians holding King's Commissions to other arms of the Army, like the Artillery, Signals, Tanks, Engineering and Air Force.

I hope, Sir, Government will be pleased to accept the recommendations made by the Skeen Committee by accepting the Resolution of my esteemed friend, Sir Phiroze Sethna.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : (Punjab : Nominated Non-official) : Sir, I have got very great respect for the Honourable Mover of this Resolution as I know him to be a very able man ; and if there were certain subjects that he knew best and if I was going to move a Resolution on those subjects and he asked me to desist from doing so, I would have done so at once. There are subjects and subjects ; and it may be that though this subject can be learnt from books or by hearing evidence, I do not think, the mover can know it properly unless he actually saw active service and knew what was needed in warfare and what sort of Army there should be which could stand the ordeal of a war. So I would ask him kindly to withdraw this Resolution. If a man has never seen a thing, by merely reading or hearing about it he gets a peculiar image of it in his mind. I will relate an example of this to the House. There was a blind man to whom a friend said " would you eat an egg ? " The blind man asked " What is an egg ? " His friend said " It is white and round. " The blind man then asked " What is white ? ", and his friend replied " White is like the colour of a paddy bird. " The blind man then said " What is a paddy bird ? " His friend tried to show him with his hand what the neck of a paddy bird was like and he put out his hand for his friend to feel. Then the blind man said, " Oh ! if the egg is like that, I am sorry I will not be able to swallow it ". In the same way, Sir, to laymen the conception of warfare is like the conception of the egg to a blind man.

Sir, I was, as the House knows, on the Esher Committee which was really the forerunner of the Skeen Committee, and the idea of a college like Sandhurst and Woolwich was first mooted by my colleague, Sir Krishna Govinda Gupta, and myself. Though all the other members were against us, we said that we ought to have a college on the lines of Sandhurst and Woolwich, and it will be seen from the Resolutions passed in the Assembly that they were all based on the recommendations of the Esher Committee. But what did they say in those very Resolutions which they passed in the other House ? They said that, though

the army should be Indianised, the officers should be taken from the classes who supply the largest number of recruits to the army in proportion to the number of recruits furnished by them. As a result of this Resolution the Skeen Committee was appointed. And what have they done? Instead of adhering to the Resolution which was the reason of the appointment of the Skeen Committee, they recommend that any candidate who is of such and such an age can appear for the examination. They further say that the civil or other authorities who are near the home of the candidate need not say that they know the applicant, and should not interfere. It is only some Committee somewhere at a distance from the applicant's home which will decide the case of a candidate, whom they do not know and judge whether he is fit to enter the army or not. Of course, the Committee require two referees. Any candidate can get two referees who are interested in him. Sir, such a departure from the method of recruitment hitherto adopted would mean a revolution in the direction. I may say, Sir, that from the time when history commenced, recruitment was made from the proper classes. The Puranas, which have been discarded by my friend who preceded me, say that there are four distinct classes in India. Those who belong to the Vashiya caste are to transact business, commerce, etc.; those who are Brahmins are to minister to the religious needs of the other communities, and the Sudras or the low caste who were never to take up arms. It was the Kshatriyas who took to the profession of arms, from whom sprang the Rajputs. This state of affairs continued till the time of the Muhammadan conquest, and the same practice remained in vogue during their rule. The Muhammadans were also fighters, and they discovered who were the best soldiers in India. So according to the feudal system, the soldiers were recruited from among the fighting classes of India. They used to levy *Jezia*. It was not a poll-tax at all. *Jezia* meant that when a man lived in the country and was unable to defend his home, he had to pay some money to the army who defended his hearth and home. So this continued for about 900 years during the time of Muhammadans. In the time of the Moghuls, it was Akbar himself who entrusted the command of the army to the fighting classes who were Rajputs. Then the English came, and after trying the martial spirit and valour of the people, they found out the various fighting classes. Suggestions have been made from time to time to the effect that recruitment should be made from classes other than the martial during the time of Lord Kitchner and Lord Roberts. They went through the question and rejected the proposal.

Then, Sir, from the time the English came, they have recruited from among the classes which have proved to be the best on the field. But if you take men, as this Committee recommends, from any class you like, then it will be a thing without a parallel in the military history of India. If you take the officers from outside the martial classes, to which the soldiers belong, there will be trouble, because the army in India have stuck to the principle that each class of sepoys must be under an Indian officer of its own class; I mean if there is a Sikh regiment, it should be under a Sikh Indian officer; if there is a Punjabi Muhammadan regiment, it should be under an Indian officer who is a Punjabi Muhammadan. Whenever during the absence of one of these officers, an officer belonging to another class has been appointed, that is to say, a Pathan placed in charge of the Sikh sepoys, or a Sikh officer in charge of a Pathan regiment, there has been resentment among the sepoys. Therefore, Sir, when you import

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an element which has never been in the army, and when these sepoys see that the new element who will officer them has done nothing during the last war or during any of the previous wars, I fear they are likely to resent it. They will resent being officered by this new element because these officers have come in under the orders of the military authorities or under the orders of politicians or under the orders of the Legislature. It is a well known fact that there are certain armies which have tolerated the interference of politicians. Take Portugal. There you have revolutions. Look at the disaster of Spain in Morocco? Why? Because politicians began to meddle with the Army. It may be asked how was India conquered or taken? Because there were intriguers in different parts of the country, because there was not one nation in this country, and the result was that the people lost the country. It is said, Sir, that history repeats itself, and if you create an army as you had before the advent of the British, then history will repeat itself and there will be a disaster. Sir, when we found in the Report that a departure was being made in the system of recruitment to the army, a system which has come down to us from centuries, the martial classes thought it their duty to bring this fact to the notice of His Excellency the Commander-in-Chief and the military authorities, and His Excellency had agreed long ago to receive a deputation.

4 P.M.

But as the House knows, I had to go to Calcutta and then when I came back I found that His Excellency had gone away on tour. So, this was delayed and we were only able to wait on His Excellency the other day. I will not say anything about what the deputation said, because it was published in the papers and I think most of the Honourable Members have seen it. But I might say just one word, that they did feel that when certain classes were not fit to be soldiers, they were not fit to be officers. If any class has not been able to give men to fight I do not think that they are capable of officering. If the Legislature and the politicians want that such an experiment should be made, all the funds of the Government are in their hands and they can vote for two other regiments to be raised. These regiments may be raised from the non-martial classes and officered by their own element. Send them to the frontier during a war and let us see if they behave well. If they do not, you can disband them and it will not matter. But to diminish the stuff which has been tried and bring in stuff which has not been tried is not, I think, practical politics.

I may say another thing. I have been attacked by my friends in the army that being at Simla I have done nothing and they are sorry that such a report should have been brought about which seeks to bring in those classes who may run away from the field. I told them that I had done all that I could; that I had approached His Excellency and told him and that the personnel of the Committee was a wrong one and nothing could have been expected from it which would be suitable to the requirements of the army; that politics played its part and that they wanted to please some of their politician friends. The Resolution says that the members of the Committee should be from the martial classes, and just at the end it says, also politicians; but when you see the personnel of the Committee, it comes first Pandit Motilal Nehru—the class which was mentioned last comes first. Able lawyers who could speak were on one side and on the other side there were soldiers who could not argue with them, and some of them did not know English and did not know what was being talked

about. I have known General Sir Andrew Skeen ever since we were first in Somaliland, that is, about 25 years ago. He is a great soldier no doubt, but when I say that he is a great soldier I cannot say that he was at the same time a great politician. And when a man is hampered by abler men and he cannot argue with them he thinks that they are right and naturally he is obliged to sign the report. There is another curious thing. The Committee which went abroad included my great friend the mover and Mr. Jinnah who have not seen active service and do not know anything about war. The third gentleman was a soldier but he has left the army and is doing a civilian job. He was like one or two members of the Committee who were dissatisfied with the army because they were not first holding the proper King's Commission and some of the junior Englishmen who came out as King's commissioned officers superseded them. Some of these left the service and others who could not afford to do so lingered on. This was the personnel of that Committee which went abroad. Another little Committee which wanted to find out where they could get best soldiers went to see the colleges. Well, it is very kind of the Government to have given us education, but the education that we are getting is such that we lose as much manhood as the education we receive. An educated man generally is bodily unfit. In England which is a cold country it is different. But in this country it is not yet known that unless a man can stand heat he is no good for this country. During the time that our boys are being trained, they are seated on benches under fans in beautiful rooms. Directly they come out of the college if you make them walk in the heat, they cannot. Their eyes are gone and they cannot see without glasses. A regiment of such men taken from a class untried was sent to Mesopotamia. What did they do? They killed three men of their own and no officer had the courage to send them into the line because if they ran away the enemy would have broken through the line. A similar experiment of raising a regiment from non-martial races has been tried before in Kashmir. The Kashmiris are such big men that one or two of them can carry on their back a big piano. It was asked of the Maharaja why he did not take such strong men into his army? It was thought to be a good suggestion, and so a battalion was raised. When it got ready, it was ordered to be sent to guard the frontier at Gilgit. But the officer commanding came with a request saying: "I shall be thankful if you can give us a posse of Sikhs, say, only four men and not more than that, as if we do not get those 4 Sikhs, our armoury at Gilgit would be looted by the Pathans and we would have no rifles to fight with." Of course, this regiment was disbanded and such a thing was never tried again. Never mind these two instances, try again if you like. You can even disband one of the best regiments and get another regiment of the type mentioned above. But I hope that any experiment made about officers or about men will be on a small scale, as we don't want all the army to be contaminated. I got up and went to my Honourable friend, the Mover, to see if there were new arguments which he might bring but he had not many. The one thing he said was that Imperial considerations should not be allowed to delay matters. If the Imperial point of view does not come in.....

THE HONOURABLE SIR PHIROZE SETHNA: I did not say that.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: If the Imperial point of view does not come in, supposing the Indian army is weakened by bringing in wrong stuff, India would get a bad name if they went and

[Sir Umar Hayat Khan.]

fought abroad, and did not come up to the mark. The English officers and the same stuff that you have got now in the Indian army were instrumental in winning the war. God forbid, but if the English had lost the war owing to the inefficiency of the Indian army, the keys of India would have been handed over to the other side in Belgium. It is really in the interests of the very country, which you say you are for, that you should not have a wrong army. My friend the Honourable Lala Ram Saran Das has cited the opinion of a Governor. I have got a pamphlet written by another Governor, which I will not take the time of the House by reading, in which he says quite different things about the Skeen Committee's Report.

**THE HONOURABLE THE PRESIDENT :** The Honourable Member has his back to the clock and is probably unaware that he has already exceeded his time-limit.

**THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN :** I will conclude by saying that the Honourable the Mover should not be in a hurry because such important questions should never be decided in a hurry. Let the House consider that this is an Imperial question, and let it be dealt with by people in England as well as here, and the more the time taken to consider the Report the more the wrong things in this Report will come to light. I hope, Sir, that the House will realise this, and take this from a person who is as much a friend of the country and who has got some experience at any rate of having done service in different campaigns including the war. Let them take the benefit of his advice and not vote in favour of this Resolution which wants to hustle things.

**THE HONOURABLE MR. V. RAMADAS PANTULU :** (Madras : Non-Muhammadan) : Before I entered the House, you, Sir, told me that you considered my amendment not in order and I shall not therefore move it. I sent it in because it was an all-party amendment which was moved in the other House and which was accepted by the President of the Legislative Assembly. However, I do not think I will be materially prejudiced in placing my case before this House by not moving my amendment, because I feel that I can say what is contained in the preamble of my amendment while I support the Resolution of the Honourable Mover. Before I accord my entire and whole-hearted support to the Resolution so ably moved by my friend Sir Phiroze Sethna, I wish to congratulate him upon the very valuable public services he has rendered to this country as a member of the Skeen Committee. The Report of this Committee, Sir, I value more for the admissions that are contained in it, which go to vindicate thoroughly Indian public opinion with regard to the British policy in India of the exclusion of Indians from military service. Valuable as the recommendations are, I value these admissions much more. Indian public opinion had all along laid four charges against the British Government in this country with regard to its military policy. First of all, we have always been telling them that there is ample potential material from which to recruit to the commissioned ranks of the army. Secondly, we have been telling them that the policy of exclusion was deliberate. Thirdly, we have been telling them that their policy of disarmament of a whole nation was based on the distrust of Indians. And, fourthly, we have been telling them that such schemes

as have been put forward, as the 8-unit scheme, are a mere eye-wash. I find plenty of justification for these four charges within the four corners of this Report itself. I shall be failing in my duty if I do not draw attention to these passages. With regard to the existence of the potential material, on page 21 of the Report, I find these sentences :—

“ We believe good potential material to exist which the efforts of Government have not yet succeeded in reaching. This belief is based upon evidence of a substantial and credible character. There are a number of young King's commissioned officers already in the Indian Army who are pronounced by their Commanding Officers to be efficient, according to the single standard of efficiency which the army recognises : and many of these have reached their present position in the face of far greater disadvantages and difficulties than a British boy has to overcome.”

That is the first charge. The second charge is admitted on page 12 with regard to the past policy of the Government of India :

“ Many and various reasons have been assigned for the unsatisfactory state of affairs described above. The root cause is plain to see. It consists in the fact that until 8 years ago Indians were wholly excluded from positions of high responsibility in the army, all military appointments carrying the King's Commission being held by Europeans alone.

There is the admission of the policy of exclusion. The third charge with regard to disarmament is admitted on page 13 :

“ In addition to the other factors which have been mentioned, sections of Indian public opinion charge Government with having increased unnecessarily the difficulties in the path through the restrictions of the Arms Act, or, as political opinion expresses it, the disarmament of the people.

Then, Sir, with regard to the unsatisfactory character of the schemes of Indianisation which is the 4th charge, this is also admitted on page 21 :

“ The most substantial reason for the dearth of candidates and one which we believe, after very careful consideration, to be the governing factor in regard to future policy is the extremely narrow scope of the scheme for the Indianisation of the higher ranks of the Army in India which has so far been sanctioned.”

Sir, public opinion, therefore, I say, stands fully vindicated by the clear admissions made by the unanimous Report of the Skeen Committee. All that I want now is the acceptance by the Government and putting into action of such recommendations as the Skeen Committee was pleased to make. Firstly, the Skeen Committee is a very unique Committee. Of the fourteen members who sat on the Committee, as many as 12 are Indians, the two European members being Sir Andrew Skeen and Mr. Burdon, the former gentleman holding an eminent position in the Indian Army and the latter being the Army Secretary. They have wholly agreed with the conclusions arrived at by their Indian Colleagues on the Committee. It is a pre-eminently Indian Committee in the conclusions of which responsible European officers concurred. The second thing is that the Report of the Committee is unanimous. It is rather unfortunate that the Honourable the Leader of the House, Sir Muhammad Habibullah, has in this connection mentioned the Lee Commission. I wish that the unanimous recommendations of this Committee were treated in the same spirit as the unanimous recommendations of the Lee Commission. But the comparison between the two merely stops at the point of their unanimity. The Lee Commission recommendations were given effect to in anticipation, and, before even its Report saw the light of day, Government were anxious to put into force those recommendations with retrospective effect to strengthen



[Mr. V. Ramadas Pantulu.]

the steel frame of this country. But this unfortunate Skeen Report, even before it saw the light of day, was practically repudiated by what is euphemistically called the Foreword, which has damned the Report in anticipation. The Foreword, if it means anything, means that the Government is not prepared to accept it. One sentence in the Foreword reads thus :

“Again the Government when called upon to deal with any scheme of increasing Indianisation extending over a number of years must leave themselves free to consider whether the basis of that scheme offers the sure stable line of advance towards the creation of a Dominion Army, or whether alternative methods which did not fall within the Committee’s terms of reference might not more profitably be explored.

The whole thing is thus thrown into the melting pot by the last sentence :

“The Committee’s Report will thus be used as a starting point for discussions with His Majesty’s Government to whom the Government of India will in due course forward their considered views on it.”

So with regard to the attitude the Government have taken, sufficient indication of it has been given in this Foreword and in the speech made by His Excellency the Commander-in-Chief in another place. I am free to admit that his speech was on the whole a sympathetic one, but it was a very halting one. I must characterise the attitude of the Government in this matter as one of diplomatic evasion and of delaying intention. But I know that the Government of India also is acting in this matter not as a free agent. The two insuperable difficulties that stand in the way of even this modest report being given effect to, seem to be these. Firstly, the racial prejudice of the British officers against serving under Indians. This is supposed to lead to a paucity of recruitment in England of British cadets ; and it is urged as a very good reason for making the pace slow. The second impediment seems to be the obstinacy of the Army Department at home. That obstinacy is based on the plea of Imperialism. They say they cannot give effect to these schemes because, in their view, the Indian Army is a link in the chain of the Imperial Army, and the Indian Army is a unit in the Empire’s forces. Therefore, the corollary is that any scheme for Indianization of the Army must be a part and parcel of an Imperial scheme of defence of India. On these grounds, the Army Department at home take their stand. But, Sir, these imperialistic ideas certainly cannot commend themselves to Indian sentiment, to Indian opinion, because they are based upon the conception that the occupation of India by the British people should continue eternally, and upon the assumption that the Army in India is to be maintained to protect the British Imperial interests and the interests of British capitalists all over the globe. That is a view to which Indians cannot subscribe. It is evident that if the people and the Government in India were to have the governing control, the Army in India cannot be used either to suppress Nationalism in China or to carry on British commercial wars in other countries. Therefore, the obvious difficulties in the way of the Army Department in England agreeing to any scheme of Indianization are patent ; but I would say that the views of the Army Department cannot be agreed to by Indians. My Honourable friend, Mr. Haig, said that sentiment was a cheap commodity and that that ought not to be a consideration ; but the whole of his argument against Indianization is based on sentiment because the British lads will not serve under Indians. May I ask what it is except sentiment, and therefore may I ask Mr. Haig to follow the old adage of not throwing

stones at your neighbour's house when you live in glass houses yourself ? Sentiment rules everywhere. I candidly admit that sentiment rules the World and India as well. If British sentiment favours the maintenance of a substantial British element in the Indian Army, Indian sentiment demands in unmistakable terms the utmost Indianization of the Army.

Then, Sir, while I accord my wholehearted support to this Resolution I wish to guard myself against three possible dangers. We who support the Resolution ought not to be understood to agree to the scheme as in any sense even a transitorily final scheme. The question of the defence of India is a part and parcel of the scheme of responsible government : it cannot be dealt with in an isolated fashion. Therefore, whenever there is a revision of the constitution, we retain a free hand to press for a provision being made in the constitution for the devolution of the responsibility of the defence of the country upon the people of the country, and to give the go-by to the whole of the Skeen Committee scheme. The second thing is that while we think that these recommendations are a fair starting point for Indianizing the army, we do not consider them satisfactory or acceptable to the people as a whole. Look at the pace. By 1952 we shall have only 50 per cent. of the commissioned ranks manned by Indians. Does any patriotic Indian consider it a sufficiently quick progress ? Even in this Report I think my friend, the Honourable Sir Phiroze Sethna and others have asked for 15 and 20 years, in the alternative, as the maximum period by the end of which not less than 50 per cent. of the officers will be Indians. And, again, we are not satisfied only with an Indian Sandhurst. We want an Indian Cranwell and an Indian Woolwich as well. Therefore, there are various matters upon which Indians are not fully satisfied with this Report, and therefore I guard myself against accepting this Report as in any way satisfactory. But I do not wish to disturb the value of the unanimity of the recommendations by striking a discordant note on this motion to start with them. The third reason for my caution in dealing with this Report is that the Report itself recognizes that in the course of five years after the establishment of an Indian Sandhurst, say, by the end of 1938, the whole question may be reviewed as stated at page 24 :

" It is however unanimously agreed that, whether the slower or the more rapid rate of progression is ultimately adopted, the scheme actually in operation should be reviewed in 1938, that is to say, 5 years, after the inauguration of the Indian Sandhurst, with a view to considering whether the success achieved is not sufficiently solid to warrant a further acceleration of the rate of progress".

Therefore, for these reasons, I should have liked to move the amendment which stands in my name giving a guarded support to the Resolution. As I have already said, I do not in the least wish to detract from the value of the recommendations or from the speech made by the Honourable Sir Phiroze Sethna.

I shall only appeal, Sir, in conclusion, to my friends on the opposite side not to throw obstacles in the way of Indianization by opposing this small measure. The Government of India have always been declaring their intention of Indianizing the Army and of allowing the people to make a real advance towards self-defence. Let that intention and that declaration be shown to be true in practice when it is tested in action. There is that declaration, there is the unanimity of this Report, there is solid Indian public opinion : if this is not sufficient, I do not know what will be sufficient. When we ask for res-

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possible government, you say : " You are not in a position to defend yourselves". When we ask for facilities for learning self-defence, we are told : " You have not got responsible government ". This is a vicious circle. I hope such a tactful and enlightened soldier, such a well-wisher and sympathiser of India as His Excellency the Commander-in-Chief will not indulge in arguments in a vicious circle and will see his way to press on the Government to give full effect to the recommendations of the Sandhurst Committee.

THE HONOURABLE SARDAR CHARANJIT SINGH : (Punjab : Nominated Non-Official) : Sir, I am afraid I cannot support the Resolution as it stands. It seems to me a bit premature to ask that prompt action should be taken on the recommendations of the Sandhurst Committee while those recommendations are still under the consideration of His Majesty's Government. I fully appreciate the services rendered by my gallant friend, General Sir Andrew Skeen and his colleagues, but a perusal of the Report shows that the terms of reference referred to one aspect of the question only. Looking at the matter from the Imperial point of view, it is evident that there are other aspects of the problem also ; for instance, its bearing on the administration and constitution of India. Then there is the question of efficiency. I am one of those who lay great stress on efficiency ; and I firmly believe that in the army, above all, efficiency must be maintained at the very highest level. I submit that these are considerations which must be thoroughly taken into account before any conclusions are arrived at on a question of such vital importance and magnitude. I am sure that even the signatories to the Report themselves do not claim for it the perfection which would admit of no further consideration or perhaps improvement. In the words of the Report itself : " there are difficulties which require a special degree of patience, wisdom and sympathy to surmount." I would therefore strongly ask my Honourable friend Sir Phiroze Sethna not to press his Resolution and to leave the advocacy of Indian aspirations in this respect in the hands of the distinguished Field Marshall, His Excellency Sir William Birdwood, whose love for India and the Indian Army is well known.

THE HONOURABLE SIR MANECKJI DADABHOY : (Central Provinces : Nominated Non-Official) : Sir, I intervene in this debate with the earnest desire—and a sincere desire—to bring this discussion, if possible, to a harmonious settlement. I wish to make clear my position to-day. I do not desire to express my opinion one way or the other on the merits of the Resolution so ably moved by my friend, Sir Phiroze Sethna. I recognise and appreciate the enthusiasm and the vigour with which he laid a series of facts before this Council to-day. It was only natural that a man who had devoted a few months in the service of the country and who had gone to distant lands for the purpose of collecting information should be so enthusiastic on the subject. My object to-day is to tell my colleagues here that I yield to none—not even to Sir Phiroze Sethna—in my desire to see the establishment of an Indian Sandhurst in India for the training of our Indian fellow-subjects. Nor do I yield to any one in my desire to improve generally upon the present supply of Indian candidates for the King's Commission. The Committee that was appointed after some months of laborious work have made certain definite

recommendations. Many of these recommendations are doubtless fundamentally vital in the development of Indian aspirations and Indian ambitions. These recommendations have been issued, but unfortunately on this occasion both Sir Phiroze Sethna and my friend Mr. Ramadas Pantulu, who have addressed the Council to-day and whose speeches I have carefully followed, have given expression to a suspicion which prevails in the mind of many of our Indian friends that the Government on this occasion is not going to act squarely and fairly, and has been deliberately delaying the expression of its own opinion on the subject for the purpose of thwarting the recommendations made by this Committee. I will not say that my Honourable colleagues there have no grounds whatsoever for entertaining such suspicions. Certain things have happened which have caused these suspicions in their minds and in the minds of some of my fellow-countrymen. I have seen the same view also expressed in the newspapers, some of them very well-conducted ones, that Government is going to altogether brush aside the recommendations of this Committee. My grievance on this occasion is, though I am pleased that the Resolution has been moved in this House and elsewhere, that my Honourable friends here and in the other House who have desired and who desire Government to take immediate action in connection with this Report are not fair both to the Government of India and to the Home Government, are not fair to the country in denying the other side an opportunity of expressing their views on the subject in clear and unambiguous terms and laying them before the Council. It is for this reason I think it prudent not to express my personal opinion at this stage on the recommendations of this Committee. I have carefully gone through this important Report, and I think it is only right, and fair that, when we ask Government to move and make certain concessions of a very important, vital and far-reaching character, it is only just and equitable that we must give the Government the fullest opportunity to consider the question most carefully and minutely before arriving at a final decision on the subject. When they have expressed their decision after that mature consideration which the importance of the subject demands, it would be our duty to criticise the action of Government in the light of the observations made by them; but till that stage is reached, I consider it premature for this Council to interfere in this matter. My friend, Sir Phiroze Sethna, has made it a grievance that Government took two and a half years to consider the Report of the Territorial and Auxiliary Forces Committee and to come to a decision; and in connection with this Report too they might probably take a similar or much longer period. At present I will not pay much attention to that statement as we are not concerned with the Report of the Territorial and Auxiliary Forces Committee. It is not before us; we are concerned only with the Resolution which my friend, Sir Phiroze Sethna, has moved, and the terms of that Resolution refer to the Sandhurst Committee, and therefore I shall lay certain matters before you in order to enable you to consider whether Government have had sufficient time to consider this matter and whether our charge at present against Government is really sustainable in any way. If you propose to make random statements and random charges against them, nobody will take any notice of you; but if you refer to facts and figures I personally think that in this case the Government are not to blame. Now take the dates just for a few minutes and see what has happened. My friend has pointed out that this Commission was appointed in June 1925.

[Sir Maneckji Dadabhoy.]

I find from their Report that they concluded their labours on the 4th of November 1926. I presume, therefore, that this Report was handed over to Government some time after the 4th of November. Unfortunately, the Report is not dated. The Commission apparently omitted to date this Report, and therefore I have no means of ascertaining when this Report was actually submitted. We shall therefore assume that some time must have elapsed between the 4th November 1926 and the submission of this Report. Then the Government of India on the 1st April 1927 published this Report, just about a few months after that, with a Foreword on the subject. If Honourable Members will kindly bear in mind these dates, in view of the circumstances I shall presently state, they will see that there has not been any undue delay on the part of Government in considering this subject, and all doubts and apprehensions or fears of suspicions as to the conduct and attitude of Government towards this Report are, in my humble opinion, altogether groundless. The other day, His Excellency the Commander-in-Chief, to whom I shall have to refer presently, stated that only a few weeks ago the Government of India submitted their provisional minute on the subject to the Home Government. Now the few months that have elapsed between the publication of this Report and its submission to the Home Government cannot be considered as a great delay, in view of the facts stated in the Foreword that the problems of recruitment and training of King's commissioned officers for whatever service are essentially an Imperial concern. Now, it is natural that in this connection a serious duty devolves on His Excellency the Commander-in-Chief who is responsible for the Army in India, and therefore he is bound to see that the whole case is thoroughly threshed out by the Government of India before the Report is sent to the Home authorities. His Excellency the other day made a fervent appeal in the other place asking the Members to forbear their judgment for a short while, and I am extremely sorry to find that no importance was attached to that advice in the other place, but I hope that when all the circumstances are laid here before Honourable Members, their decision in this matter will be of a different character. His Excellency stated that the matter is now before the Home Government. Therefore, Sir, are we right, when the matter is *sub judice*, in extorting an admission from this Government by passing this Resolution or in asking this Government whether they are going to accept the recommendations of the Skeen Committee in their entirety or not? In simple language, it means that my friend, Sir Phiroze Sethna, who was a Member of the Skeen Committee, wants an *ex parte* judgment. He wants the Government to pronounce an *ex parte* judgment without giving the Home Government the bare opportunity to express an opinion on the subject. Would such action be in conformity with the existing constitution? I do not know what the decision of the Home Government is going to be. I am not now in a position to know what is the recommendation of the Government of India in the matter. But I know this, as a matter of fact, and you will all agree with me, that we have in His Excellency the Commander-in-Chief a most devoted and an affectionate friend of the sepoys and Indian officers. I have been connected with His Excellency for over 20 years. I sat with him in the old Council some 20 years ago, and I know his feelings and sympathy for the Indians, and especially for the

Army in this country. It is very unlikely that he will not promote the privileges, the dignity or the position of Indians by bettering their education in military matters. Therefore, Sir, I ask, why should there be this indecent haste to pass this Resolution? For so many years our countrymen have been debarred from admission into the higher ranks of the army. Will a few months more make such a great difference in their advancement? If this matter comes up for discussion, and I am sure the Home Government's despatch must in the ordinary course of business arrive before we meet in Delhi, I feel confident that the Government of India will make a definite pronouncement on the subject at the Delhi Session.....

THE HONOURABLE SIR PHIROZE SETHNA: Do the Government promise it?

THE HONOURABLE SIR MANECKJI DADABHOY: I think this matter is likely to come up in the Delhi Session, I mean in ordinary circumstances. Is it therefore necessary to press this Resolution at this stage? Sir, my personal opinion is that this Council would be acting with great dignity and with forbearance if they did not press this Resolution, and joined me in appealing to our friend, the Honourable Sir Phiroze Sethna, to withdraw this Resolution now. If my friend thought that this Resolution was necessary in order to bring the matter prominently to the notice of the Government of India and the Home Government, that object has already been achieved by moving this Resolution here and in the other House. Mere passing of this Resolution will not help us at all.

I also do not agree with my friend Sir Phiroze Sethna, nor with my friend Mr. Ramadas Pantulu, in their statements that because it was a unanimous Report it must be given effect to. Is this Council going to lay down and accept a dangerous principle that when the Report of a Commission is unanimous, it must be accepted in its entirety? Surely, Sir, we men of judgment, we men who know and understand things about our country, are not always to be guided wholly by the expression of opinion of Committees, even if their recommendations are unanimous. We are entitled to express our independent judgment on all such matters, and therefore I do not think much stress can be laid on the proposition that, because the recommendations of the Committee were unanimous, they should be accepted in their entirety. I think the Government should have a full and fair opportunity of examining the subject. Even the Report itself laid special stress on two important points, namely, the efficiency of the Army and that the European recruitment should not be prejudiced. If they have made these two points very clearly, it is all the more necessary that these recommendations should be carefully scrutinised, examined and considered both by the Government of India and by His Majesty's Government before a final pronouncement is made on the subject. I appeal, therefore, once more to my Honourable friend, Sir Phiroze Sethna, to withdraw his Resolution. I hope that my remarks will not be misunderstood to-day. I have not expressed any opinion on the merits of the case on which I shall have another opportunity to speak hereafter.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab : Sikh) : I have to tender an apology to the Council for taking up a few minutes of their valuable time at this late hour, but I would assure them that I would try my

[Sardar Shivdev Singh Oberoi.]

best to be as brief as possible. I think India stands indebted to Lieutenant-General Sir Andrew Skeen and the other members of the Indian Sandhurst Committee for the pains which they took and the unanimous verdict which they gave on one of the most important subjects which concern not only India but, I think, the Imperial Government. In a forcible and reasonable speech the Honourable the Mover of the Resolution has said that recommendation should be made to His Excellency the Viceroy that he should ask the Secretary of State for India to take the Report into consideration and to give effect to it promptly. I need not give any further reasons because it does not require any more reasons than those which have been forcibly put forward by the Honourable Mover.

I would like to say a few words on the remarks which have fallen from the lips of those Honourable Members who have either advised the withdrawal of the Resolution or who have attacked in very vehement terms the decisions of the Committee. From what I gather from the learned speeches of my senior Honourable friend, Sir Maneckji Dadabhoy and of my Honourable friend, Sardar Charanjit Singhji, they simply wish that the matter should not be hastened, and the Government of India or the Home Government should not be asked to hasten their decisions as regards the recommendations of the Skeen Committee. They have referred in right terms about the sympathies of our present Commander-in-Chief and I fully endorse what has been said. I am fully cognisant of the fact that we have got in His Excellency the Commander-in-Chief the best friend of the Indian Army, and I think that this is one of the important grounds why this question should be taken up during the time of his office as Commander-in-Chief of India. As regards the argument that as the matter is under consideration with the Home Government, therefore we should not in this House pass this Resolution—and a request has been made to the Honourable Mover to withdraw it—but I do not understand the necessity of this course. It has been said that when the Government pronounces its decisions, then will be the time for this Council to consider them. I think that it will be a very hard task to take up the position of opposing the decisions of the Home Government and the Indian Government. I think it will be a very hard task for any Honourable Member to come forward with amendments and oppose the decisions of the Government of India and the Home Government. I think the present is the time when we, as Members of this House, responsible representatives of India, must submit our views for the consideration of the Government of India and the Home Government and say that the recommendations made unanimously by the Skeen Committee should be given effect to as soon as possible.

As regards the recommendations of the Committee I agree generally with all the recommendations which have been made with one or two minor exceptions which perhaps I may be allowed to mention later on. But before I go into these minor exceptions, I find myself in a very peculiar position, because in this very House one Honourable Member has expressed the opinion that the decisions of this Committee have not satisfied the Indians at large. He wants too much of it and he wants to hasten the Indianisation of the Indian army. With regard to this, I am quite satisfied that the recommendations of the Skeen Committee are there in such a form as can be said to hasten the Indianisation of

the Indian army. As regards the remarks of my gallant friend from the Punjab who has very vehemently attacked the decisions of the Skeen Committee on one ground that the members of the Committee were not real fighting men and were more politicians than fighting men, and therefore the politicians have overpowered the few fighting men and thus these recommendations have been made : I would draw the attention of the Honourable House to the fact that out of the 13 members of the Committee I can count 7 members who can be said to be real fighting men, including the Honourable Chairman of that Committee, and out of the balance of 6 I would like to mention the names of two gentlemen at least, Sardar Jogendra Singh and Nawab Sir Abdul Qaiyum, who can very well be considered to belong to the martial races according to the definition of my Honourable friend. Though they have not been in the fighting line themselves, they are certainly very competent authorities on matters relating to the military constitution of India. I am sorry I am a bit late in expressing my thanks to my gallant friend for the complimentary words which he used in regard to the Sikhs when he mentioned the formation of a Kashmiri regiment under the orders of the Maharaja of Kashmir. While thanking him for his complimentary remarks regarding the Sikhs, I must say that I do not agree at all with the ideas expressed by him later. From the way in which he gave expression to his ideas, it struck me that he was opposing the recommendations of the Committee tooth and nail. And now I wish to confront him with the first passage of the memorial which was submitted to His Excellency the Commander-in-Chief by a deputation which, I believe, was led by the gallant Colonel. It says :

“ We sincerely congratulate the Skeen Committee on the generally liberal spirit, in which its recommendations have been conceived. The proposed pace of Indianisation may be regarded as slow, but in view of the fact that the Committee suggests the possibility of a revision of this pace in 1938, we shall not make a grievance of the cautious beginning proposed in the Report. We do hope that every endeavour will be made to give early effect to the recommendations made in the Report.”

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : If you want to read it, read it in full, because otherwise it gives a wrong impression.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI : Any other passage which may be beneficial to you can be read out by you.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : Only if I were allowed could I do it ?

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI : I take the first and the most important point to meet your arguments.

This clearly shows that the deputation headed by my gallant friend Sir Umar Hayat Khan had sincerely expressed their opinion that the recommendations made in the Report should be given effect to at an early date. He said further on that the commission should be open to members of the martial classes in India. Of course I have read this also, and I agree with him to a very great extent ; but while agreeing with him I cannot disagree with the recommendation of the Committee that it should be an open competition, of course with some reservation of nominations for commissions by His Excellency the Commander-in-Chief. As regards this expression of opinion that the commissions

5 P.M.



[Sardar Shivdev Singh Oberoi.]

should be open only to the martial classes, I fail to understand it because my friend has not given the definition of martial races. Nor has he given the names of the martial races of India. (*The Honourable Colonel Nawab Sir Umar Hayat Khan* : "You will see it at the end of the memorial). Thank you. He thinks that the King's commission should be the monopoly of those whom he calls the martial races of India. I beg to differ from him most respectfully. My opinion about the spirit in the human body is something different from what my friend thinks of it. Of course qualities in human beings can be developed either by inheritance or by associations. Of course I admit that qualities are inherited and that the sons of warriors and the men of martial classes generally are themselves good warriors and are better fitted for the army than the sons of others who are in professions or business or in clerkships. At the same time, I think that these qualities can be secured by training, by association and by education and other means. I cannot agree that the son of a bania cannot become a good general or a good lieutenant. I cannot agree that only the son of a captain or a colonel can become a good lieutenant. I can mention instances of men in the army whose fathers, grandfathers or great grandfathers were never in the army and yet have qualified themselves as good lieutenants and are as good as the British officers. With these remarks I generally support the Resolution put forward by my friend Sir Phiroze Sethna.

With regard to my little points of difference, of course these are matters of detail, but I would like to give expression to them also.

**THE HONOURABLE THE PRESIDENT** : The Honourable Member has just one minute at his disposal.

**THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI** : Briefly, Sir, I would like that 75 per cent. of the commissions should be recruited by open competition and 25 per cent. by nomination. The second point is that when the examination takes place, it should not be only in the languages or geography, history or mathematics, but there should also be an examination to test the physical health of the candidates, their sportsmanlike habits and family services, whether their fathers were in the army or not, and so forth. These are the few words I have to express in support of the Resolution put forward by my Honourable friend, and I hope that Honourable Members will support it.

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF** : When I first saw this Resolution tabled I could not help feeling that it was premature. However, I do not regret this debate in one respect, in that it has given an opportunity of hearing the ideas of Honourable Members of this Council and realising what their views are on the subject—views which Government will certainly be glad to take into consideration. I notice that in the speeches of two of my Honourable friends, Sir Phiroze Sethna and Sir Maneckji Dadabhoy, a good deal of stress was laid upon the actual time taken by the Committee and the time which has already been taken by Government. As I told Sir Phiroze Sethna, I took no exception whatever to the time taken by the Committee. I realise it was necessary that they should have taken all the time they required. Later on he stated, I think that I had claimed for Government that we had not yet had half the time or one-third of the time to consider it. As a matter of fact, I

made no mention whatever of any factor of time and I happen to have here the exact words I used. What I said was :

"And when we realise, the time, the committee necessarily had to take Honourable Members will probably agree that Government could hardly have dealt with the Report quicker than they did."

THE HONOURABLE SIR PHIROZE SETHNA : I will find it out.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : As I have said, I felt when this Resolution was tabled that it was premature and I cannot help feeling that it is still the case, and I also think that the sense of this House will probably agree with me in that respect, when I mention in a very few words how the matter now stands. On receipt of the recommendations of the Committee, the Government of India at once set themselves to consider it as carefully as they could. Before going any further I would like to say how very grateful the Government are to the Committee, for the very great trouble they took in dealing with the whole matter. They went into the subject with the greatest care and we are grateful to them. My Honourable friend Sir Phiroze Sethna seems to me to say : " why not then carry out the recommendations straight-away ". Well, the Government of India are not in a position to say now either that the recommendations can be accepted straightaway, nor are they in a position to say that they must be rejected. As a matter of fact, no Government worth its salt could possibly delegate to any Committee, however influential, their own rights and responsibilities in this matter. As I have said, the Government of India set to work on the report and dealt with it as expeditiously as they could, considering the importance of the question. Having done that, Government were able a short time ago to send a telegram to the Secretary of State giving their provisional views upon the proceedings of the Committee. I am sorry that the telegram could not give His Majesty's Government the necessary time which must be essential for them to come to any considered judgment on the matters before us. We realised they would have to consult the Committee of Imperial Defence upon any matter which involves army reorganisation, as the recommendations of the Committee do, and that is really how the matter stands. His Majesty's Government have informed us that they have not come to any considered judgment on this matter, and when this House considers the enormous and the inherent responsibility which does lie on His Majesty's Government for the defence of the whole Empire, I am sure they will realise that it is not a matter which can be dealt with in a few days or weeks, or possibly months. I am not quite certain when the Committee on Imperial Defence will next meet, but till then His Majesty's Government will not be able to come to any definite conclusion. That, Sir, is very briefly how the matter stands and when the House realises this, they will appreciate the fact that Government at this stage can no more accept the recommendations of the Committee than think of rejecting them. That being the case, I do urge on my Honourable friend that he should withdraw this motion and when things are so undecided not to attempt to bring forward any hostile motion against Government at a time when we have not even arrived at our provisional conclusions.

THE HONOURABLE SIR PHIROZE SETHNA : Sir, I am much obliged to His Excellency the Commander-in-Chief for what remarks he has just offered, and in reply to his inquiry as to the paper from which I drew my information,

[Sir Phiroze Sethna.]

I will quote from the special correspondent of the *Times of India*, from his telegram, dated Simla, August, the 25th, in which.....

**THE HONOURABLE THE PRESIDENT:** The Honourable Member must not labour that point. He was interrupted by His Excellency the Commander-in-Chief to explain that His Excellency did not complain of the time the Committee took to produce this Report. The Honourable the Mover of the Resolution nevertheless set up an argument for the purpose of demolishing it; and I cannot allow him to demolish it a second time.

**THE HONOURABLE SIR PHIROZE SETHNA:** I shall then first proceed to reply to the observations made by the Honourable Sir Umar Hayat Khan. This Honourable Member holds that because I am not a soldier, and much less been in action, I am by no means justified in moving the Resolution. Following this argument I think the proper course for me would have been not even to have accepted a seat on the Committee. I believe however I am in good company and in no better than that of Sir Umar Hayat himself for, although he has often told us that he is first and last a soldier, and yet he is ever ready to favor the House with his opinions on very divergent subjects with most of which he has not even a nodding acquaintance. My Honourable friend, Sardar Shivdev Singh Oberoi, has spared me the task of reading out the quotation from the representation of the deputation headed by Sir Umar Hayat Khan himself, and in which they have not only approved of the recommendations of the Committee in particular about having Indians represent half the full strength of officers in 25 years, but they have said the pace recommended by the Committee was not quick enough. The Honourable Sir Umar Hayat Khan interjected by saying that we must not read that passage by itself but read other passages as well. I suppose he refers to the passage in the representation where they say :

“Are we to understand from this that the word of Command is to rest with the Bania, the Arora, the Khatri, the Khoja, the Bohra and the non-Punjabi etc.”

I think the Honourable Sardar has very ably replied to this point as well and made clear that a soldier need not be a born soldier, that is to say, the child of a father or grandfather who was himself a soldier. Any man can become a soldier if he has the aptitude and the necessary training for it. My Honourable friend, Sir Umar Hyat Khan, knows that there were as many as eight gentlemen on the Committee who were soldiers, some of them did entertain at first the views to which he has given expression here to-day, but they eventually came round to our way of thinking. They recognise that the doors were not closed to the so-called martial classes. It was certainly open to them to continue as before and to continue to a larger extent, but there was no reason why the same opportunity should be denied to persons coming from classes whom my friend Sir Umar Hayat calls non-martial.

It will interest Sir Umar Hayat and those who hold the same views as he does that in the course of our investigations at St. Cyr in France we inquired as to the number of boys who came from the military classes and of those whose fathers had not followed the military profession. The House will be interested to know that out of the 325 boys at St. Cyr at the time 175 were sons of professional soldiers and 150 were sons of men in different civil professions. We were told

further that the former, namely, the sons of soldiers, did not as a rule display any greater military aptitude than the latter, and the latter, the House will be still more interested to know, were sons of tax-collectors, business employees, carpenters, chemists, agriculturists, bailiffs, butchers, band masters and working men.

I would like to satisfy the Honourable Colonel that the question was very fully considered by the Committee, and the conclusions they have come to were accepted even by their colleagues belonging to what he calls the martial classes. My Honourable friend has not spared even Lieutenant-General Sir Andrew Skeen and the other military members of the Committee and said that they were won over by the politically-minded members on the Committee. Let me assure him that General Sir Andrew Skeen was not to be won over as easily as he thinks. He is a Scotchman for one, and it would be almost impossible to get him to budge from an opinion he had formed after mature consideration. If anything it was he who made us turn round to his views and shaped the recommendation which we finally accepted of having half the cadre consist of Indians at the end of 25 years and not earlier.

My Honourable friend, Sir Maneckji Dadabhoy told us that he had no remarks to make on the Report itself. All he wanted to do was to appeal to me that I might withdraw the Resolution and leave the matter in the hands of His Excellency the Commander-in-Chief. I entertain the same high regard for His Excellency as he does. Sir Maneckji said he had known him for a long number of years; I too claim the same privilege. In fact I claim to know his views better having come in close contact with him when serving on a particular Committee when I had opportunities to judge of His Excellency's regard not only for the soldier himself, but for those having to do with the soldier, his views in the matter. If the decision were left absolutely in the hands of His Excellency Field Marshall Sir William Birdwood, I would cheerfully and readily withdraw the Resolution and agree to whatever he says; but we know that the most His Excellency can do is to influence his colleagues on the Executive Council of His Excellency the Viceroy and no further, and that the final say will rest with the authorities at home. It is therefore, Sir, that I cannot but press my Resolution to a vote. Why need my friend, Sir Maneckji, be so apprehensive? He knows well enough that constituted as this House is at present, what the fate of my Resolution will be. We all know it is bound to be lost, and if in spite of that I say that I shall ask for a division, it is solely for the reason of letting the Secretary of State know that at any rate the elected Members of this House favour the unanimous recommendations of the Sandhurst Committee. For this reason, Sir, I cannot accept the proposal of Sir Maneckji Dadabhoy and which has been repeated by His Excellency the Commander-in-Chief to withdraw the proposal.

Now, Sir Maneckji Dadabhoy appears to be in the confidence of Government (*The Honourable Sir Maneckji Dadabhoy*: "No.") He thinks the decision will be out before the Delhi Session in January. He is very confident about it, but His Excellency the Commander-in-Chief in his speech could give no such assurance. I quite agree with His Excellency that the matter requires time; it cannot be settled in a day, in a few weeks or even some months. My Resolution does not say that the decision must be arrived at to-morrow. I quite realise

[Sir Phiroze Sethna.]

that it must take some reasonable time, but the moving of the Resolution only means that we do not want the Government to take any longer time than they can help, and as much time might not again be lost as in the case of the decision on the report of the Auxiliary and Territorial Forces Committee's Report which took two years and seven months. Let me assure His Excellency the Commander-in-Chief that it is not a case of recording a hostile vote as he calls it. It will be a vote to impress upon the Secretary of State the necessity of giving early effect to the recommendations of the Committee.

THE HONOURABLE SIR MANECKJI DADABHOY : It is a vote which might spoil a good case.

THE HONOURABLE THE PRESIDENT : The question is :—

“ That the following Resolution be adopted.

“ This Council recommends to the Governor General in Council to urge on the Secretary of State for India the necessity of taking prompt action in pursuance of the recommendations made in their report by the Indian Sandhurst Committee ”.

The Council divided.

#### AYES—17.

Akram Hussain Bahadur, The Honourable Prince A. M. M.  
Alay Nabi, The Honourable Saiyid.  
Desika Chari, The Honourable Mr. P. C.  
Khaparde, The Honourable Mr. G. S.  
Mahendra Prasad, The Honourable Mr.  
Mukherjee, The Honourable Srijut Lokesh.  
Natesan, The Honourable Mr. G. A.  
Oberoi, The Honourable Sardar Shivdev Singh.  
Ram Saran Das, The Honourable Rai Bahadur Lala.

Ramadas Pantulu, The Honourable Mr. V.  
Rama Rau, the Honourable Rao Sahib Dr. U.  
Rampal Singh, The Honourable Raja Sir.  
Ray Chaudhury, The Honourable Mr. Kumarsankar.  
Sankaran Nair, The Honourable Sir.  
Sethna, The Honourable Sir Phiroze.  
Seth, The Honourable Rai Bahadur Nalininath.  
Sinha, The Honourable Mr. Anugraha Narayan.

#### NOES—23.

Bell, The Honourable Sir John.  
Berthoud, The Honourable Mr. E. H.  
Brayne, The Honourable Mr. A. F. L.  
Charanjit Singh, The Honourable Sardar  
Commander-in-Chief, His Excellency the  
Corbett, The Honourable Sir Geoffrey.  
Dadabhoi, The Honourable Sir Maneckji  
Das, The Honourable Mr. S. R.  
Froom, The Honourable Sir Arthur.  
Habibullah, The Honourable Khan Bahadur Sir Muhammad, Saheb Bahadur.  
Haig, The Honourable Mr. H. G.  
Hooton, The Honourable Major-General Alfred.  
McWatters, The Honourable Mr. A. C.

Mehr Shah, The Honourable Nawab Sahibzada Saiyad Mohamad.  
M'sra, The Honourable Pandit Shyam Bihari.  
Muhammad Buzlullah, The Honourable Khan Bahadur.  
Stow, The Honourable Mr. A. M.  
Swan, The Honourable Mr. J. A. L.  
Tek Chand, The Honourable Diwan.  
Thompson, The Honourable Sir John Perronet.  
Tudor-Owen, The Honourable Mr. W. C.  
Umar Hayat Khan, The Honourable Colonel Nawab Sir.  
Wacha, The Honourable Sir Dinshaw.

The motion was negatived.

The Council then adjourned till Eleven of the Clock on Friday, the 2nd September, 1927.

## COUNCIL OF STATE.

*Friday, 2nd September, 1927.*

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The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### INDIAN SUCCESSION (AMENDMENT) BILL.

**THE HONOURABLE MR. S. R. DAS** (Law Member) : Sir, I move that the Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, be taken into consideration.

I explained a short time ago at the time of introduction that the object of this Bill is really to enable a married woman, when the deceased is a Christian, to take out letters of administration or probate without the necessity of obtaining the consent of her husband; in order to bring the law into conformity with that prevailing in England. Sir, I move.

**THE HONOURABLE THE PRESIDENT** : The question is :

"That the Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, be taken into consideration."

**THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY** (East Bengal : Non-Muhammadan) : Sir, I beg to move :

"That in section 10 proposed to be inserted in the Married Women's Property Act..."

**THE HONOURABLE THE PRESIDENT** : The Honourable Member's amendment comes a little later. I shall put the question first. The question is :

"That the Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

**THE HONOURABLE THE PRESIDENT** : Clause 3. The question is :

"That clause 3 do stand part of the Bill."

The Honourable Mr. Kumarsankar Ray Chaudhury.

**THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY** : Sir, I beg to move :

"That in section 10 proposed to be inserted in the Married Women's Property Act, 1874, by clause 3 of the Bill, the words 'or the trust estate' be inserted after the word 'deceased' wherever it occurs."

I submit that this is a mere draftsman's mistake and hope that the Honourable the Mover of the Bill will accept it.

**THE HONOURABLE MR. S. R. DAS** : Sir, I am inclined to think that it is my Honourable friend's mistake and not the draftsman's mistake. I think

[Mr. S. R. Das.]

my Honourable friend will agree that the amendment is unnecessary. I take it that he desires to insert the words "or the trust estate" after the word "deceased" with the object of making the husband liable in case there is loss or damage to the estate of the deceased; but that is unnecessary, because he is liable if there is a breach of trust committed by his wife; and breach of trust, you will find, is defined in the Indian Trusts Act which applies now throughout India as involving also any loss or damage to the trust estate caused by the trustee as also any neglect in getting in the trust property. Therefore, it is unnecessary to insert the words "or the trust estate". The first part, the liability to any breach of trust committed by her, includes all the other matters which are mentioned in order to apply to a case of an executrix who is not a trustee. I trust my Honourable friend will not insist on the amendment.

**THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY:** I withdraw the amendment.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE MR. S. R. DAS:** Sir, I move that the Bill be passed.

**THE HONOURABLE THE PRESIDENT:** The question is:

"That the Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, be passed."

The motion was adopted.

### INDIAN LIMITATION (AMENDMENT) BILL.

**THE HONOURABLE MR. S. R. DAS (Law Member):** Sir, I move that the Bill further to amend the Indian Limitation Act, 1908, be taken into consideration. I explained the object of this Bill on the last occasion only a short time ago. It refers to certain amendments of section 10 of the Limitation Act and articles 133 and 134 of that Act.

**THE HONOURABLE THE PRESIDENT:** The question is:

"That the Bill further to amend the Indian Limitation Act, 1908, be taken into consideration."

**THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muham-madan):** Sir, I beg to move:

"That the Bill further to amend the Indian Limitation Act, 1908, be referred to a Select Committee."

My reason for doing so is that the Bill as framed raises very vital questions which involve very serious consequences to Hindu, Muhammadan and Buddhist religious and charitable trusts. The law as it at present stands may be summarised thus. With regard to a suit to recover properties vested in a trustee for a specific purpose, there is no period of limitation. Properties can be recovered after the lapse of any time; so also with regard to trust properties alienated by the trustee without consideration; they may also be recovered now after the lapse of any time. With regard to trust properties alienated for valua-

ble consideration the period of limitation for recovering them is 12 years from the date of the transfer under article 134 of the Indian Limitation Act. With regard to trespass on endowment properties, the period of limitation is also 12 years. But, Sir, the Privy Council have introduced a very material change by the well known decision in *Vidya Varudhi v. Valuswami Pandithar*, in which they point out that Dharmakarthas of Hindu temples, Mutavallis of mosques and people like that are not trustees in the English sense of the word, that they are mere managers, and no property is vested in trust in them, and therefore they are not within the purview of section 10 and they will not be within the purview of article 134. The consequences of that decision are these. With regard to properties alienated by such managers, whether for consideration or not, the protection of section 10 is not available, and a suit against the alienee of the trust property will be barred by limitation in the ordinary course either by article 144 or some other article. Therefore, section 10 will not protect them. To guard against that, I find this Bill makes a provision by adding a paragraph to section 10 that :

“ For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.”

It is of course beneficial so far and it ought to stand. But this Bill further purports to introduce the same *Explanation* into articles 133 and 134 of the Indian Limitation Act, the effect of which will be very disastrous to Hindu, Moslem and Buddhist endowments.

At present, as the case-law stands with regard to the Hindu, Muhammadan and Buddhist endowment properties, when properties are alienated, they can be recovered back during the lifetime of the alienor and within 12 years from the date of succession by his successor. If an alienor is the manager of a Hindu temple or a Muhammadan mosque, the properties can be got back during the lifetime of the alienor, or within 12 years from the date of his death. Therefore it gives a very extended period of limitation. Knowing as we do, the very unsatisfactory way in which the Hindu and Mussalman trusts are managed and the negligence with which the rights of these are treated, it is undesirable, in my opinion, to curtail the period of limitation which is now available for suits in regard to that class of trust properties. This particular Bill says that the suit should be brought within 12 years from the moment the transfer becomes known to the plaintiff, who is generally the beneficiary or the succeeding manager. That is a very serious infringement of the existing right. Therefore, I think it requires very serious consideration from the Members of this House.

Another objection to this Bill is that it curtails the period of limitation with regard to the recovery of trust moveables to three years. Article 133 which relates to trust moveables was purposely placed in that part of the Schedule which relates to suits of 12 years' limitation by the framers of the Indian Limitation Act. It has been there since the Indian Limitation Act was passed, and even in the English Statutes a difference exists between the trust moveables and the ordinary moveable property with regard to limitation. Some of these moveable properties consist of incomes from various sources like securities and things of that sort. Therefore, if a trustee misappropriates the



[Mr. V. Ramadas Pantulu.]

trust moveable property by alienating it, I really do not see any justification why the trust should be made to lose the property within a short period of three years. Indeed, it would be very disastrous to the interests of the trust. It may be urged that it will not be possible to recover the specific moveable property after three years, but it is well known to the Members of the House that when a suit is brought to recover the moveable property, in the alternative a claim for its value should be made under the Civil Procedure Code. Therefore, the article really deprives the trust of the right to get back the value of properties misappropriated. A man cannot be put into jail for not bringing a specific moveable into the court. He can only be mulcted in damages to the extent of the value of the article. Therefore, the curtailment of the period of limitation means that you cannot recover either damages or its value after three years. Some Members perhaps know that when the remedy is barred, the right is also extinguished under the Indian Limitation Act. In the case of some annuities the endowment may not only lose the incomes for three years but also lose the right itself. Therefore, it is a very serious curtailment. I have not seen in the Statement of Objects and Reasons any reasons as to why a provision which existed from the time the Indian Limitation Act was enacted is sought to be suddenly changed so as to curtail the period of limitation from 12 to 3 years.

Another matter which requires consideration is this. The existing article 134 says that the period of limitation should be 12 years from the date of the transfer to recover trust properties. This Bill says 12 years "when the transfer becomes known to the plaintiff". The Civil Justice Committee was considering the means whereby to curtail the length of the civil proceedings, and therefore they wanted something more definite in the third column of the articles in the Limitation Act wherever they were vague and involved the adding of a large mass of oral evidence. If you say that the starting point is the date of the transfer of title, or of possession, then it will be something definite. If it is the date of plaintiff's knowledge, in every case the plaintiff may say that he knew it only two years ago and the defendant may say that the plaintiff knew it more than 12 years ago. Therefore, it opens a wide door for voluminous oral evidence. The object of the Civil Justice Committee is actually frustrated by this provision by making it more vague and more elastic and thereby opening the door to more conflicting evidence in cases like these. I notice from the Bill to amend the Transfer of Property Act, which was circulated to all of us, that registration was made a conclusive proof of knowledge at least for those who take the property. It is also proposed to make conveyance compulsory in all cases of transfer. If that is so, then the original article giving it from the date of transfer may stand. Anyhow, this is a matter which ought to be considered. What is most extraordinary is this. With regard to article 134, one set of Judges said that the starting point of limitation should be from the date of transfer; another set of Judges said that it ought to be from the date when the possession of the property was taken; and the third set of Judges said that the article applied only to those cases in which the transfer was accompanied by possession. I find that the Bill does not adopt any of these three views. It takes the fourth view, namely, that the starting point should be from the date of knowledge of the plaintiff. I think there is much to be said

in favour of the three views already taken by some eminent Judges of the High Courts. One of them was Sir John Wallis, who is now in the Privy Council, the others, Sir Murray Coutts-Trotter, the present Chief Justice of Madras, the late Justice Sir K. Srinivasa Iyenger of Madras and Justice Mukherjee of the Calcutta High Court. From the beneficiary plaintiff's point of view the date of the passing of the possession to the alienor may be most equitable for registration may not be notice of transfer to the beneficiary who seems to recover the properties.

The proper course is to have a separate article to deal with the cases of alienation of Hindu, Muhammadan and Buddhist endowments and not to club them with alienations of other kinds of trusts now dealt with by articles 133 and 134. The Bill as framed raises very large questions by curtailing valuable rights and creating various other difficulties. I do not think it should be passed in the form in which it is framed. Therefore, I suggest that more thought should be given to it, and with this object I move that it be referred to a Select Committee.

THE HONOURABLE MR. S. R. DAS: Sir, I am prepared to accept the motion moved by the Honourable Mr. Ramadas Pantulu, but I should like to make it clear that the Bill curtails none of the present rights. However, it is a matter that might very well go to the Select Committee so that I may be able to show my learned friend that his apprehensions are really needless.

THE HONOURABLE THE PRESIDENT: The original question was:

"That the Bill further to amend the Indian Limitation Act, 1908, be taken into consideration".

Since which an amendment has been moved:

"That the Bill be referred to a Select Committee."

The question I have to put is:

"That the Bill be referred to a Select Committee."

The motion was adopted.

## INDIAN LIGHTHOUSE BILL.

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary): Sir, I move that the Bill to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India, as reported by the Joint Committee, be taken into consideration.

Last February, when I moved that this Bill be referred to a Joint Committee, I gave a full explanation of its scope and its objects. Since then, it has been very carefully examined by the Joint Committee, which has submitted a unanimous report. The Bill is of a rather special and technical nature, and the interests affected were well represented on the Joint Committee. In these circumstances, I do not think that I need detain the House by enumerating in detail the small amendments that were made in the Committee. ~~They were either amendments of a drafting nature, or else matters of administrative detail, which will, we hope, make for the smoother working of the Act.~~

[Sir Geoffrey Corbett.]

There is, however, one question to which I wish to refer, and that is, the constitutional powers of the Advisory Committee, for which clause 4 of the Bill provides. I wish to make it clear that the Government and the Legislature must retain ultimate responsibility for the lighting of the coasts on which the safety of life and property so much depends. And they must retain ultimate control over expenditure. But subject to this the Government are quite prepared to accept the recommendation that the advice of the Central Advisory Committee should in ordinary cases be accepted. The Bill requires that this Committee "shall consist of persons representing interests affected by the Act or having special knowledge of the subject-matter." The Government fully recognise that a Committee so constituted will carry great authority, and they agree that its advice should ordinarily be accepted. The Government are also quite willing that interests affected should be represented on the Committee in the manner recommended.

Sir, I move.

The motion was adopted.

Clauses 1 to 9 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 10.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY (East Bengal: Non-Muhammadan): Sir, after having consulted the Honourable Member in charge of the Bill, I do not propose to move the amendment\* that stands in my name.

Clause 10 was added to the Bill.

Clauses 11 to 22 were added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR GEOFFREY CORBETT: Before moving that the Bill be passed, I should like to express my appreciation of the very helpful interest that has been taken in it by Shipping and Commercial bodies, British as well as Indian. I can only hope that, when this Bill becomes law, it will be administered, with the assistance of the Advisory Committee, so as to give India a more efficient and a more economical lighthouse service.

Sir, I move that the Bill, as amended by the Joint Committee, be passed.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India, as amended by the Joint Committee, be passed."

The motion was adopted.

\* (a) That in sub-clause (1) of clause 10 after the words, "two annas per ton", the words "of the ship's tonnage" be added.

(b) That in sub-clause (2) of clause 10 the word "either" be inserted before the words "on its arrival", and the word "or" be substituted for the word "and" occurring before the words "on its departure".

(c) That in the proviso to sub-clause (2) of clause 10 the words "at any port in British India" be inserted after the words "in respect of any ship".

## BODIES CORPORATE (JOINT OWNERSHIP) BILL.

THE HONOURABLE MR S. R. DAS (Law Member): Sir, with regard to the terms of the amendment of which notice has been given, we think that they require serious consideration, and I propose, with your permission, Sir, not to move for the Bill being taken into consideration now.

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## PRESIDENCY-TOWNS INSOLVENCY (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill further to amend the Presidency-towns Insolvency Act, 1909, for certain purposes, be taken into consideration.

Sir, as is clearly pointed out in the Statement of Objects and Reasons, the amendments proposed in the Bill relate to sections 7 and 36 of the Presidency-towns Insolvency Act, 1909. Section 7, as it now stands, empowers an Insolvency Court to decide all questions of priorities and all other questions whatsoever, whether of law or of fact, which may arise in any case of insolvency coming within the cognisance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. As will be noticed by Honourable Members the words are in very wide terms.

Section 36, on the other hand, empowers the Court *inter alia* to summon before it any person "supposed to be indebted to the insolvent" and to require such person to produce before it any documents in his custody or power relating to the insolvent, his dealings or property. If, on such examination of such person, the Court is satisfied that he is indebted to the insolvent, it may, on the application of the Official Assignee, order him to pay to the Official Assignee, the amount in which he is indebted. This section taken alone does not empower the Court to inquire into and decide a claim which is not admitted. The Calcutta High Court and also the Bombay High Court have always interpreted this section to mean that it is only when a debt to the insolvent is admitted that an order is made for payment by the debtor to the Official Assignee. The Madras High Court has read section 36 along with section 7, the terms of which, as I have already pointed out, are very wide, and they have gone into cases of disputed claims, and the object of this amendment is to make it quite clear that the Calcutta and the Bombay High Courts' practice is the correct one, and to make it quite clear that it is only in cases where a debt is admitted that the Insolvency Court is empowered to order the debtor to pay the debt to the Official Assignee. The reason why the Calcutta and the Bombay High Courts have always taken that attitude is really a matter of practical convenience. In an ordinary suit where a man claims money that is due to him and when the defendant disputes the claim, he is entitled to put in a written statement. He is also entitled to see and inspect the documents on which the plaintiff relies. When the case comes before the Court, he is entitled to cross-examine the plaintiff or the witnesses for the plaintiff; but under the insolvency proceedings, where a debt is disputed, there is no procedure of that description at all. What happens under section 36

[Mr. S. R. Das.]

is that the man who is alleged to be indebted to the insolvent's estate is summoned, he is examined and cross-examined, and if upon that the Court is satisfied that he is indebted he is ordered to pay. That is to say, he does not get a proper trial, he does not get the advantage of the procedure which he is entitled to, if the case was in an ordinary Civil Court, with the result that the Court orders him to pay the money without giving him an opportunity to cross-examine the insolvent or his witnesses. Even in a small matter, like a small claim which comes up before a Small Cause Court, the defendant is entitled to see the documents upon which the plaintiff relies, and he is entitled to cross-examine the plaintiff. It is only right that where a claim is disputed, the defendant should be given an opportunity to show that he is in the right which he cannot do under the procedure in the Insolvency Court. That is the reason why the Calcutta and the Bombay High Courts have never made an order with reference to a claim which has been disputed by the debtor. I may also mention, as a matter of fact, that this proposal was submitted to the High Court of Madras. The Madras High Court has agreed to follow the procedure of the Calcutta and the Bombay High Courts. To make this quite clear, this Bill has been introduced for the purpose of saying that it is only in cases where the debtor admits the claim and where no further proceeding is necessary, that the Insolvency Court is empowered to order him to pay.

The amendments proposed by clauses 3 and 5 of the Bill are intended to make it clear that a debtor, when he files his petition for insolvency and the petition is admitted, must at the same time also file with the Official Assignee all his books of account and a list of his debtors and creditors. That is sometimes done by the rules of the High Court, but recently there was a decision of the Calcutta High Court doubting whether the rule of that Court which requires an applicant to file his list of debtors and creditors and his books of account is *intra vires* of the Insolvency Act. In order to make that quite clear this amendment of the Insolvency Act has been introduced so that there may be no doubt that the Court can make rules as to how these accounts are to be produced, when they are to be produced, and in what form they are to be produced and so on.

Those are the amendments proposed by the Bill. Sir, I move.

THE HONOURABLE THE PRESIDENT : The question is :

"That the Bill further to amend the Presidency-towns Insolvency Act, 1909, for certain purposes, be taken into consideration."

The motion was adopted.

Clauses 2, 3, 4 and 5 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS : Sir, I move that the Bill be passed.

The motion was adopted.

## REPEALING BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill to repeal certain enactments, as passed by the Legislative Assembly, be taken into consideration.

This is a formal Bill to repeal such enactments as have become spent or repealed by other Acts or without express specific repeal are for some reason or other no longer in force. It is really a formal Bill in order to assist the production of the new edition of the Unrepealed General Acts which has now been taken in hand.

I move, Sir.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Monday, the 5th September, 1927.



## COUNCIL OF STATE.

*Monday, 5th September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### QUESTIONS AND ANSWERS.

#### CLOSURE OF THE CAB ROAD AT HOWRAH RAILWAY STATION.

96. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (a) Has the attention of the Honourable Member in charge of Railways been drawn to the inconvenience of female passengers owing to the closure of the Cab Road at Howrah railway station (in Bengal) ?

(b) Is it a fact that 3rd class male and female passengers have to pass through a narrow gate into the station platform ?

(c) If the answer to (b) be in the affirmative, will the Honourable Member be pleased to state whether any case of assault near the narrow gate has been brought to his notice ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) No.

(b) I would refer the Honourable Member to the replies given by the Honourable Sir Charles Innes to Questions Nos. 1018 and 1039 asked by Khan Bahadur Sarfaraz Hussain Khan in another place on the 25th March 1924. Sir Charles Innes then explained that channels leading up to the gates had been found necessary so as to prevent the gates being rushed.

(c) No.

#### ELECTION BY THE HOWRAH MUNICIPALITY OF REPRESENTATIVES TO THE ADVISORY COMMITTEES OF THE EAST INDIAN AND BENGAL NAGPUR RAILWAYS.

97. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : What is the reason for depriving the Howrah Municipality of the privilege of electing its representatives to the East Indian Railway and Bengal Nagpur Railway Advisory Committees ? Does the Calcutta Corporation enjoy this privilege ?

THE HONOURABLE SIR GEOFFREY CORBETT : The constitution of the East Indian Railway Advisory Committee provides for one member representing Municipal interests who need not necessarily be a member of any particular municipality. The method of appointment of this member is a matter for the local authorities. The Bengal Nagpur Railway Company have not adopted the constitution laid down for Advisory Committees on State Railways, and no membership for a representative of a municipality *as such* is provided for on the Committee of the Bengal Nagpur Railway Company.

The Calcutta Corporation has a representative on the East Indian Railway Committee.



## CONGRATULATION TO THE LEADER OF THE HOUSE ON THE K. C. S. I. CONFERRED ON HIM.

**THE HONOURABLE THE PRESIDENT :** The Council might like to know that I have had a letter from the Honourable Sir Manmohandas Ramji who, lest he should not have an opportunity of thanking the Council for their congratulations and should seem therefore ungrateful, has written to me and asked me to express to Honourable Members his thanks for the kind references made to him at the opening meeting. This reversion to the subject of titles enables me to repair a serious omission which I made at the first meeting. I have to confess that it only struck me at the eleventh hour before that meeting, that it is customary at the first meeting after the issue of the Honours List, to congratulate those Honourable Members who have received honours. The Honourable the Leader of this House was so covered with decorations beforehand that I have to confess that the very important honour which he received, in that it did not alter his designation or title, escaped my notice, thinking as I was of the matter very hurriedly. His services to the State have been so eminent and have covered such a long period that we have to confess that in some degree they must have contributed to his receipt of the honour of K. C. S. I. which was conferred upon him on the 3rd June. At the same time I think we may assert and claim that his able leadership of this House in some considerable degree contributed to the fact that he received the great distinction given him on that occasion. Honourable Members, I am sure, would all like to join with me in offering him our most hearty congratulations. (Applause).

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House) :** Sir, I am highly grateful to you for the very handsome tribute which you have paid to me for the honour which I have recently received at the hands of His Majesty the King-Emperor. I have all along been under the impression, ever since the announcement of that honour, that whatever my services in other fields were, for which, Sir, you have admitted I have been already covered with decorations, and whatever the value of my leadership of this House might have been, the honour in question was largely due to my leadership of the Indian Deputation to South Africa. I have never concealed the fact that the success which attended that deputation would have been impossible of achievement but for the fact that those who worked with me contributed their best to the cause which I and they had at heart. They worked with an earnestness which it is impossible for me to describe. They devoted themselves wholeheartedly to the work which they had to do. They rendered to me loyal and enthusiastic co-operation which enabled me to achieve the little success that I was able to secure, and I think it will ill become me if I do not acknowledge on the floor of this House the assistance which I received from them. It would have given me greater gratification if all those who had contributed to the success of that delegation had been likewise honoured, but it was no small consolation to me to find that the deputy leader, my friend, Sir Geoffrey Corbett, who received a suitable recognition of his very valuable service, was decorated on the same date on which I had the honour to be decorated. I can assure my other colleagues on the delegation that the honour is not so much mine but it is more theirs.

## RESOLUTION *RE* RELEASE OF POLITICAL PRISONERS.

**THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY**  
(East Bengal : Non-Muhammadan): Sir, I beg. to move the following Resolution which stands in my name :

“ This Council recommends to the Governor General in Council that he be pleased—

- (a) to order the unconditional release of all such convicted or under-trial political prisoners in Indian jails as have not been held guilty in an open trial by any court of law or charged with any act of violence and of all political detenues whose trial in a court of law is not contemplated ;
- (b) to appoint a committee consisting of two members elected by the Legislative Assembly, one member elected by the Council of State, one member nominated by the Government and an Indian Member of the Executive Council of His Excellency the Governor General of India as President, to review the case of all other political prisoners convicted or under trial ; and
- (c) to order the release of all such prisoners as are not held to be guilty by this committee.”

Sir, my Resolution consists of several parts. It at first requests the Government to set free three classes of people, namely, those that have been convicted by law courts but not for any act of actual violence. It then deals with prisoners who may be still under trial but not under charge of any actual violence, and, thirdly, it deals with those political detenues whose trial in a court of law is not at all contemplated. It thus asks for a general amnesty to all prisoners who have been convicted or detained for political offences or charges not amounting to any act of violence, that is, to those who have been punished merely for their political views being opposed to the present system and policy of Government. Sir, we are all more or less dissatisfied with the present system and policy of Government. Even the Government acknowledge that this system requires to be changed, and they are shortly going to appoint another Commission to revise it. Is it, therefore, fair and proper that those who had expressed dissatisfaction, it may be in a somewhat extreme fashion, should be penalised for doing so ? Acknowledging the need and actually providing for the gradual reform of the constitution of India, the Government ask us to co-operate and work it out with them. May we not, therefore, ask the Government, as we have repeatedly been doing, to co-operate with us at the same time by taking us into their confidence and by creating an atmosphere of confidence in which all can freely express their opinion without fear of being lodged in jail for doing so ? An act of clemency at a psychological moment like the present, when the Government are going to inaugurate the first instalment of reform and inviting the people to come out with a scheme of their own, is sure to bring about a great change in the political atmosphere of the country. Such an amnesty was no doubt given after the War, when the announcement of the future policy with regard to the Government of India was made in 1917, and the Government say it had not the desired effect. But the disappointing result was surely not to any want of response on the part of the people of India, but to the unsatisfactory and disappointing nature of the reforms afterwards granted and to its quickly being succeeded by the change of attitude of the Government towards the people after the close of the War and the perpetration of Jallianwalla Bagh

[Mr. Kumar Sankar Ray Chaudhury.]

and other horrors and the introduction of the Rowlatt and other repressive Acts in India.

The second part of my Resolution asks the Government to appoint a representative Committee presided over by one of the Members of the Government of India to review the cases of all other political prisoners. We have no doubt been passing through times of excitement. The officials of the Government and the people as well have been equally affected by it, and so long as the judiciary is not separated from the executive the administration of criminal justice is bound to be looked upon with suspicion. It is, therefore, not unreasonable, I submit, to ask for a Committee where all views are represented, to sit in review over these cases dealt with by law courts, and a judgment passed by such a Committee is more likely to create confidence in the country.

Before going into the merits of the controversy, I feel it my duty to thank the Government of India for the declaration of a somewhat liberal policy made by the last Home Member in his speech in March last and our thanks are also due to His Excellency the present Governor of Bengal for giving some effect to the policy outlined by the Honourable the Home Member. But the method adopted to carry out this policy, if I may venture to submit, is not generous at all and is not likely to appeal to the people; on the contrary, the slow way in which the Government is proceeding is likely to take away from the effect which it would otherwise have.

If the Government are, as they ought to be, after proper investigation, which they have no doubt made, satisfied as to the guilt or otherwise of persons detained, they ought to publish their decision forthwith and to set free those about whose innocence they are so satisfied. The mere fact that the Governor of Bengal has announced that, if the situation continues to improve he hopes to release the remaining persons detained before the end of this year, shows that so far as His Excellency is concerned he is satisfied that they were innocent. This is also borne out by the statement made by the Honourable Mr. Moberly on the 23rd February 1927, that he would reiterate and emphasise that detention in jail is not resorted to in these cases as a punishment for any crime which a person may be believed to have committed—punishment for crime is solely a matter for the courts—the detention is purely preventive. This statement and the opinion expressed by His Excellency the present Governor of Bengal, I venture to submit, contradict and refute the statements made by Earl Winterton and Lords Reading and Lytton which they had themselves to correct from time to time when forced to do so by being contradicted and challenged on our side. These persons are now in jail, and as such they have no power nor can they in any way be made responsible for the improvement or detriment of the general condition of the country, and I fail to see any reason why they should continue to suffer in jail till something happens with which they have nothing to do. The very fact of their detention in jail is in my opinion likely to stand in the way of the situation in the country improving.

Much has been sought to be made of their refusing to give undertakings about their future conduct. The mere fact that the Government think fit

to rely upon their undertakings shows that the Government really feel that they are men of honour and innocent. But can they be expected to give such humiliating undertakings implying that they are men of evil propensities when the Government on their part do not give them any assurance that they would set them free on giving such undertakings? The existence of the Intelligence Department of the Government also depends on the continuance of a state of unrest in the country and the existence of this Department to a great extent contributes to the situation in the country remaining unimproved. The Honourable Mr. Moberly in his speech of the 23rd February 1927 has been forced to admit:

“It is obvious that information about secret organization can be obtained only from persons who are or have been members of that organization whether they are detenus or at large.”

We have also been repeatedly pressing that it is these people who are serving the Government as spies and informers as parts of these organizations who are serving as Agents provocateurs, and whenever any tendency towards leniency is displayed by higher authorities or any critical situation arises in the country these people readily come to discover some bombs or pistols at odd places or to ferret out some conspiracies and start a case implicating some hirelings who upon conviction are handsomely compensated and comfortably looked after in jails. Repeated questions about the family allowances granted in case of some of these persons either imprisoned or detained have been asked in the Bengal Council, but the Government have not vouchsafed to give us any answer. When the Swaraj Party was formed to capture the Congress the main organisers of its mouthpiece, the *Forward* newspaper were arrested and the day after this party defeated the Bengal Ministry, warrants for the arrest of the chief workers of the Party were signed by virtue of which Subhas Chandra Bose, Satyendra Chandra Mitra and other organisers of the Party were arrested. Even the recent utterance of the Governor of Bengal has been immediately followed by the discovery of some empty shells and a broken revolver.

Srijut Subhash Chandra Bose, Satyendra Chandra Mitra and Anilbaran Ray had the good fortune of being sent up to the Legislatures as representatives of the people and had to be released by the force of public criticism, but the other poor fellows must rot in jail to expiate for the sins and activities of the Swaraj Party. Allegations have been made by two of the detenus Bhupendra Nath Dutt and Jiban Lal Chatterjee, about the existence and activity of the agents provocateurs, but have the Government made any investigations about these allegations or disclosed the results of such investigation? On the contrary, is there not evidence in the hands of the Government to show that the persons now detained had nothing to do with anarchical crimes that has cropped up during the last eight years and that they were the doings of a gang whose leader had made a clean breast of it to His Excellency Lord Lytton and has since been released and is now settled in life after his marriage with his family and child?

Let me now turn particularly to the case of some of the persons who are being still detained in jail under Regulation III of 1818, and I shall then deal with some who have been interned under the Bengal Criminal Law Amendment Act, 1925.

[Mr. Kumar Sankar Ray Chaudhury.]

*Jiban Lall Chatterjee* was suspected to be implicated in the Bolshevik conspiracy case at Cawnpore. Those actually convicted on trial have been released on expiry of the terms of their sentence. But he is still in jail for more than 4 years...

THE HONOURABLE MR. H. G. HAIG (Home Secretary): I do not think, Sir, that *Jiban Lall Chatterjee* is now in jail.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: He has been brought to Almora but he is still a detenu. I am going to state that as well.

THE HONOURABLE MR. H. G. HAIG: He is not in jail.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: But he has been in jail for more than four years. That is wrong, I submit, probably for the sin of trying to expose the doings of the Agents provocateur. While in jail he contracted phthisis. At the early stage of the disease the Burma Government recommended his transfer to Bengal for treatment but the Government of Bengal refused to take him back. Almost at the last stage of his life he has now been brought to Almora.

*Satish Chandra Chakravarty*.—He is suffering from filaria contracted at Moulmein. His legs are swollen which makes him unfit in future life. Several physicians have declared him to be incurable. He was then left to arrange for his treatment according to some other system. *Kaviraj Syamadas Bachaspati*, an eminent physician of Bengal, has given him medicine which has done some good, but in order to cure him the *Kaviraj* wants to keep him under personal supervision, but the Government will not allow him to be brought back to Calcutta. He has also been suffering from occasional fits which make him senseless for some time and he has been in jail for the last 4½ years.

*Bepin Behari Ganguly*.—He is suffering from indigestion and insomnia. Sixteen of his teeth have been extracted, but to no effect. His only brother has died leaving a wife and a minor son with no one to look after his education or to manage the affairs of his family. Settlement operations have commenced in the locality and he has applied for leave to be permitted to go home for some time and is awaiting a reply to it.

*Jotish Chandra Ghose*.—Unless a man is seriously ill one is not taken to the jail hospital under the Rules so when he was suffering from a severe nervous breakdown he was taken to the jail hospital at Insein and kept there for about 2 months. Major Finlay, Superintendent of Insein Jail, strongly recommended that he should be removed to Bengal and the Inspector General of Prisons, Burma, also supported it. But due to the persistent refusal of the Government of Bengal and on Superintendent Finlay refusing any longer to keep him, this gentleman was sent to Mandalay Jail where, on his arrival, seeing the wretched condition of his health, Superintendent Major Smith at once consulted Lieutenant-Colonel Brayne and he has declared that this gentleman has lost all vitality and may survive only for 5 or 6 years more if strictly looked after. He is suffering from hallucination and partial derangement of the brain and may drop down dead any moment. Two other detenus who

were staying with him are now under orders of transfer and he will have to live alone in this condition.

*Arun Chandra Guha* is suffering from blood poisoning and abscesses all over his body. He has been confined with another detenu who has taken a vow of silence, so both of them are in effect now in solitary confinement.

*Purna Chandra Das.*—He has been suffering from gastric ulcer and dysentery and is now lodged somewhere in the Madras Presidency.

Some of the State prisoners detained under Regulation III have been transferred to internment under the Bengal Criminal Law Amendment Act of 1925, and the late Home Member alleged that the ground for doing so was to give them facilities for village and home internment. But the real object of the Government of India in doing so was perhaps to avoid the responsibility of keeping these persons detained and to be heckled by the Legislature for doing so. For otherwise it seems inexplicable why the persons so transferred were largely sent out of the province of Bengal where under the law they could only be kept confined in jail.

Before leaving this branch of the subject under discussion I may in passing ask the Government how in the face of the provisions of section 4 of the Bengal Criminal Law Amendment (Supplementary) Act, 1925, the Government of India can shirk the responsibility for transferring people interned from one province to another, and how after such transfer the Inspector General of Prisons, Bengal, continues to pass arbitrary and most irksome orders regarding the withholding of letters without giving any reason therefor as required by law, or regulating the diet and clothing of the prisoners or the daily search of their persons and cells. Perhaps it will be difficult for this House to believe that even letters written by some of the detenues for purposes of their election to the Legislatures were withheld under orders from the Bengal Government.

I now come to those who are interned in villages under the Bengal Criminal Law Amendment Act, 1925. Recently I asked a question about the unhealthy localities in which they are confined, but the Government answered my question in the negative. I will therefore confront them with a few cases.

*Manoranjan Gupta* has been interned at a village called Harishpur, a very unhealthy place, infested with snakes, in the island of Sandip in the Noakhali District. He has to report himself twice to the thana every day. The thana is 2 miles off from his place of internment without any road and he has to wade through water eight miles every day to report himself to the thana.

*Kiran Chandra Mukherjea* has been interned at Ramgaty, a place infested with malaria where he cannot get either a servant or cook and he cannot cook at all himself as one of his hands is paralysed.

Not to multiply instances I may say that a large number of these detenues have been confined in Jalpaiguri District which is notorious as the hot bed of malaria, and one of these persons whose name I now forget was placed in a most unhealthy village where he contracted malaria through the effect of which he died in the Calcutta Campbell Medical Hospital even before his parents could arrive to see him on receipt of a telegram from the authorities.

[Mr. Kumar Sankar Ray Chaudhury.]

I now cite another case of detention in jail at Mandalay of a gentleman named Surendra Mohan Ghose whose case deserves special mention as he is now lying bed ridden and in a precarious condition due to chronic dysentery from the very beginning of his detention.

In conclusion, I would submit that this provision for village internment, though ostensibly intended to give the persons detained some freedom, serves to operate as a great hardship to them, for besides being confined in most unhealthy places they are given an allowance varying from Rs. 20 to Rs. 35 a month, whereas those in jail get an allowance of Rs. 45 to Rs. 90 for food alone, and a personal allowance of Rs. 32 for other expenses besides free medical treatment and attendance of servants. Those interned in villages do not get any servants at all because of the hostile attitude taken towards them by the local police, and they have thus to go without food as most of them do not know how to cook themselves.

With these words, Sir, I beg to commend my Resolution for the acceptance of this House.

THE HONOURABLE MR. H. G. HAIG : Sir, my Honourable friend has raised a question of considerable importance and when a matter of this nature is under discussion, the Honourable the Home Member would ordinarily have wished to renew his long and distinguished connection with this Council and would have come down himself to represent the case on behalf of Government. I merely wish to say that the Honourable the Home Member is detained by urgent and essential work in another place.

The subject my Honourable friend has raised is not a new one. I fancy in one form or another it has been before this Council on several occasions. But I do not complain that he should have raised it, for we are dealing with questions which affect the ordinary civil rights of individuals and questions affecting the primary obligations of the State to preserve the security of its citizens. We are faced with the difficult problem of how far we can reconcile those two positions and how far it is necessary that the ordinary civil rights of citizens should give way to overriding State considerations and those principles from which ultimately the civil rights of individuals are derived. Though my Honourable friend has not raised a new subject, it seems to me that he has succeeded in importing some novelty into the discussion by the terms of his Resolution. I have studied it with some care to try and ascertain exactly what action he recommends the Government to take. There are to my mind certain points of obscurity. I was not able, for instance, to appreciate exactly what is meant by all convicted persons who have not been held guilty in an open trial by any court of law. This is one of the categories of persons whose unconditional release he suggests. Further, there are a number of references to political prisoners. Well, Sir, for the purposes of casual discussion or journalistic reference we all have some sort of idea of what is meant by a 'political prisoner,' but when the Government are asked to take definite action, I think it is necessary to be more precise. The term "political prisoners" is not known to the Indian Criminal Law. I do not know whether my Honourable friend suggests that a political murderer or a political dacoit should be placed before his Committee so that his case should be reviewed. I want just

to remind Honourable Members of the sort of actions which are committed under the name of "political" and the perpetrators of which no doubt would assert that they were political prisoners. I would refer to the judgment just delivered by the Chief Court of Oudh in the Kakori Conspiracy Case, and this is what the learned Judges said about the outcome of this case. They said :

"Thus, in a little over a year, some of the accompaniments of this conspiracy were the deaths of 4 men killed by fire-arms, the wounding of 12 others with fire-arms and torture of a brutal nature."

So much, Sir, for political prisoners. But I admit that my Honourable friend refers at any rate in one part of his Resolution to those who have not been guilty of violence. I am not quite sure, Sir, what particular class of persons he has in mind. We have moved some distance from the old unhappy days of non-co-operation when a number of gentlemen of high principles thought it their duty as a political protest to defy the laws of the country. We have not now, I am happy to say, in our jails any persons of that class. When he talks, therefore, of political prisoners who have not been guilty of any act of violence, I can only suppose that he means those who have been convicted of seditious writing or speech. Well, Sir, on what grounds are these gentlemen to be released unconditionally? If we are to release all such persons what is the use of retaining on the Statute-book sections which deal with such an offence? Finally, my Honourable friend suggests the appointment of a Committee, a somewhat motley Committee, if I may say so, to perform some very unusual functions. As far as I can make out, his object is that this Committee should review the case of convicted prisoners—prisoners convicted under the ordinary law and by the ordinary courts—and should then order the release of such persons as are not held to be guilty by this Committee. In other words, this Committee is to be set up to review the judicial findings of our courts. Is this an anticipation of the Supreme Court of Appeal of which we were hearing a few days ago? However, Sir, I do not wish to press too much the actual terms of my friend's Resolution. I would merely suggest to any Honourable Member who proposes to vote for it that he would be voting for some rather curious results. But I am prepared to argue the case on the broad ground which I think he wishes to take, and that is, the general release of the Bengal detenus. My Honourable friend has made a general appeal for the sympathy and the co-operation of the Government, and I do not wish to suggest that such an appeal is treated without due consideration. But, Sir, we are all aware that it is very easy to take a sentence out of a written or spoken passage, divorce it from its context and place upon it a meaning which it cannot reasonably bear. I want to ask the Council to look upon the present situation in connection with its context and with the chain of events that have led up to it. I hope it is not necessary to assure this Council that the Government do not like this system of detention without trial. The Government, Sir, are not moved by any obscure instinct of tyranny. To put it on the lowest grounds, the detention of these men causes Government a great deal of anxiety; it exposes them, they are well aware, to a great deal of prejudice; and if consistently with their primary obligations they could get rid of this system, they would do it to-morrow. The retention of these men under these special powers is justified by one reason and one reason only, and that is, the necessity for controlling a dangerous movement of revolutionary conspiracy. I do not wish to take the House



[Mr. H. G. Haig.]

in detail through all the unhappy history of the past. But I would like to remind the House of a few outstanding features, to show how we have arrived at the present situation. It is hardly necessary to remind this Council of the earlier revolutionary conspiracy which brought such trouble, such danger and such suffering to Bengal. The main outlines of that conspiracy were very plain. There was a series of robberies and dacoities, not infrequently attended by murder, with the object of raising funds for the purposes of this conspiracy. There was the manufacture of bombs and the collection of arms in order to carry out the primary purposes of that conspiracy. There was the assassination of Government officers, attempted or actual, whether high officials of Government, or those who in the course of their duties had made themselves obnoxious or inconvenient to the conspirators. And, finally, there was the terrorisation of witnesses and informers and, if necessary, their murder. The trial of that conspiracy could be followed by the blood of its victims. How was that formidable situation dealt with? Substantially by the methods which have been employed recently. The chief persons concerned were interned under Regulation III and other action was taken under the Defence of India Act, and those methods were successful. That formidable conspiracy was brought under control; so much so that in the year 1920 when a new constitution was being launched in this country with high hopes—at any rate on the side of the Government—it was decided to try the very policy which my Honourable friend is now advocating. A general amnesty was proclaimed. And what was the result? For a time there was a lull; but that did not mean that the conspiracy had ceased. That lull, I fear, looking back on it in the light of what has happened since, was a lull merely in order that the conspirators might mature their preparations and improve their methods. After a brief period we saw a recrudescence of that conspiracy, substantially the same conspiracy with the same objects, the same methods, and to a large extent the same persons. I need not recapitulate the story which was given by Sir Alexander Muddiman to the Legislative Assembly last cold weather of the deplorable series of crimes which took place during the years 1923-24. At last the Government were forced by the very successes of the revolutionaries to have recourse once more to the only methods yet discovered for dealing with them; and once more those methods were successful, to this extent, that the conspiracy was checked and outrages ceased. I think I am right in saying that since the introduction of these special measures there has been no further case of revolutionary outrage. I except of course that brutal murder of a distinguished police officer in the Alipore Jail. But, Sir, though the manifestations of this conspiracy have ceased and have ceased, I claim, because of the action taken by Government, it would be sanguine to hold that the conspiracy has been altogether destroyed. The means of the conspirators have been hampered but they still exist—the material means still exist, as is shown by certain finds of bomb cases and revolvers to which my Honourable friend referred in a somewhat frivolous manner. I do not know where he gets his information from—I imagine from a certain paper in Calcutta; but I should like to know his authority for suggesting that the revolver discovered a few days ago at Salkea was a broken revolver. The bomb cases which were there discovered were of a most dangerous character; I do not suggest they were filled, but they were bombs which when filled would be of a most dangerous character. Well, Sir, the material means for carrying

out this conspiracy still exist. What have we to say about the will of the individuals? Some of them—I hope a large number of them—have seen the error of their ways. But some of those who have been engaged in this conspiracy are men of a very desperate character. Now, my Honourable friend who smiles about these finds of bomb cases and revolvers might perhaps recollect that something less than two years ago at Dakhineswar certain persons were arrested in possession of these very things; they were put up for trial before a special court and their conviction was upheld by the High Court. Those men went to serve their term of imprisonment in the Alipore Jail; and what did they do, or some of them? They battered to death actually in the precincts of the Alipore Jail Rai Bahadur Bhupendranath Chatterjee. Does that not suggest to this Council that the men who were concerned with these bomb cases and revolvers are men of a somewhat desperate character?

I do not think I need say anything more to convince the House that this is a real conspiracy, that it is not an invention of the police; it is a conspiracy which, if it is not indeed in active operation—and I do not wish to suggest that—is kept in subjection by these very methods which have been employed reluctantly by Government. I would just like to say one word about the evidence we have from cases which have been judicially tried out about the existence of this conspiracy. I referred just now to the Kakori conspiracy case, the appeal in which has just come to a conclusion. It is rather remarkable in reading through the judgments to see how close is the connection between Bengal and this conspiracy in the United Provinces. The Chief Court says in their judgment:

“The central organization remained in Bengal whence the policy was directed and controlled.”

There are many passages of a similar character. The Sessions Judge says:

“One may in fact state that it”—

that is to say, the conspiracy,—

“was directed from Bengal.”

I would also ask the Council to reflect for one moment on this rather significant fact that among those who were convicted in the Kakori conspiracy case were two who were actually Bengal detenus. I refer to Sachindra Nath Sanyal and Jogesh Chandra Chatterjee. This is what the Chief Court says about Sanyal:

“In 1916, Sachindra Nath Sanyal was convicted by a special tribunal at Benares for complicity in a revolutionary conspiracy and sentenced to transportation for life. He subsequently received an unconditional pardon as a matter of clemency. After his release in 1920 he wrote on his own admission the book called ‘Bandi Jiwan’ or the ‘The prisoner’s life’ which is on the record. It is a eulogy of his previous activities containing a definite incitement to others to commit similar crimes. He subsequently entered into this conspiracy as one of the main promoters.”

Now, this is what they say of Jogesh Chandra Chatterjee:

“We are satisfied upon the evidence that Jogesh Chandra Chatterjee was one of the persons who originally conceived the idea of the conspiracy and that he was a member of what the rules call the central council which operated in Bengal.”

Another person convicted in the Kakori case was one of those who were actually arrested in the Dakhineswar House, Rajendra Nath Lahiri. That, Sir, is the present situation or that of the immediate past.

[Mr. H. G. Haig.]

I have shown how it has developed, and this is the background against which we have to consider the problem of release. This matter is one which engages the anxious attention of Government constantly. There have been a number of pronouncements of policy recently, all to the same effect. His Excellency the Viceroy, in addressing the Legislature at the beginning of last cold weather, stated the policy of Government. It was again stated by Sir Alexander Muddiman in the course of the debate in the Legislative Assembly last February. It was stated once more by Sir Alexander Muddiman on the 21st March, 1927, and within the last week or two, it has again been stated by His Excellency the Governor of Bengal. Sir, I wish to draw attention to that statement of policy. Sir Alexander Muddiman on the 21st of March 1927 said :

“The policy of Government regarding those who have been detained under Regulation III or the Bengal Criminal Law Amendment Act in connection with the Bengal revolutionary conspiracy has been and still is that the detention of no man should last longer than is essential in the interests of the public safety.”

He then went on to explain that Government could not take the responsibility of releasing those about whom there is no reasonable doubt that they will utilise their liberty to resume their previous activities. And he then said :

“They are, however, anxious to proceed, as quickly as possible, with the gradual release of individuals whose conduct gives reason for hoping that they will not abuse their liberty.”

His Excellency the Governor of Bengal in addressing the Bengal Legislative Council quoted this statement, and he then said :

“That was a definite statement of policy pronounced upon this vexed question just before I took up my office in Bengal. There has been no change in this policy, upon which I have considered it my duty to proceed. Since that statement was made and after a most careful consideration of the whole situation in all its aspects, and after consultation with my Government, I considered that the conditions prevailing in Bengal justified an acceleration of the rate of release, and action was taken accordingly.”

And I wish to call the special attention of the Council to this point. The statement of policy is naturally a somewhat abstract one, and it is reasonable for the Council to say : ‘these are no doubt fine words, but what have you done ? What action have you actually taken in pursuance of this policy ?’ Well, Sir, the figures quoted by His Excellency the Governor of Bengal give, I think, a striking answer, and I should like to go back a little further than His Excellency the Governor of Bengal and quote the figures of the 15th January of this year, just before His Excellency the Viceroy made his first statement of the policy I have mentioned. On the 15th January there were in jail under the Bengal Criminal Law Amendment Act 72 prisoners, and 16 in jail under Regulation III, that is to say, 88 altogether. At the present moment there are 32 in jail under the Bengal Criminal Law Amendment Act, and 8 under Regulation III, that is, 40 altogether. The number detained in jail, therefore, is less than half of what it was on the 15th January last. The number of those who have been dealt with under these special powers and have since been released altogether, free from all restrictions, on the 15th January, was 18 ; it is now 60. I claim, Sir, that those figures show that the Government are genuinely and honestly

pursuing the policy which has been laid down, but the pursuit of that policy depends on the continuance of the existing conditions, and that, Sir, was made very clear by His Excellency the Governor. He said :

" Provided no untoward event occurs and the conditions at present prevailing in Bengal continue and the conduct of those released justifies the action taken in their cases, I hope that a large number of those now detained will have been transferred or released before the end of the year."

That, Sir, is a statement with which, I suggest, this Council may well rest content. And there is one final sentence which His Excellency the Governor pronounced, and to which I would invite the particular attention of the House, for, as the Council will realise, this is a policy of individual release. It is based on the judgment of the Government about the attitude of mind of the individual prisoner. And His Excellency the Governor in conclusion said :

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" I shall continue to give my own personal attention to each individual case."

I hope, Sir, that I have succeeded in leading the House to reflect on the series of events which have led to the present situation, in making clear to them our view of the situation as it now is and indicating the principles on which the release of individual detenus can be, and is being, carried out. I trust that this Council will believe in the honesty of purpose of Government and will realise the steady progress that is being made in the direction of releasing these men. I have every confidence that the Council will support Government in rejecting these proposals for the immediate release of those at present in detention.

THE HONOURABLE SRIJUT LOKENATH MUKHERJEE (West Bengal : Non-Muhammadan) : Sir, the Resolution which I have the honour and pleasure of supporting falls into two parts. It calls for the release of all those persons who have not been held guilty in an open trial by any court of law and also of all political detenus under the Bengal Ordinance or under the Regulation, and it pleads for the release of such other political prisoners as will not be held guilty by a committee of a certain constitution also suggested in the Resolution.

Sir, I know there is a feeling that anything said on a Resolution like the one which is before the House will not persuade the Government to accept it, and yet I feel that I should not cast my silent vote on such a Resolution. Sir, speaking for myself I am more seriously concerned with the political detenus, especially of Bengal, the province from which I come, and I shall therefore confine myself more to this part of the Resolution.

Sir, so far as the first part of the Resolution is concerned, it will require little argument on my part to make out a strong, nay indeed, an unanswerable case in support of the proposal of my Honourable friend the Mover of the Resolution. So far as the Honourable Members on this side of the House are concerned, I do not think they need any argument to convince them of the plain justice, the soundness and the common sense of this part of the Resolution. So far as my Honourable friends on the opposite side are concerned, they are, I submit, impervious to all arguments in favour of these detenus. Sir, we in this House wish to be cautious and moderate in our language, and I

[Srijut Lokenath Mukherjee.]

will not employ any invectives in the course of my speech—for one reason, that no invective can be adequate to the enormity and iniquity of the action of Government in this matter, and yet the practice of sending to jail and detaining there for an indefinite period large numbers of people against whom no charge has been formulated and no evidence adduced can only be characterised as barbarous and tyrannical. And our righteous indignation at the wanton and indiscriminate use of this barbarous method borders upon anguish when we recollect that, of the young men who have been the victims of these remorseless measures, some are of high character and brilliant attainments—men of whom any age or nation might be proud—and whom it would be a sin against common sense to associate with bloodshed, crimes of violence or revolutionary conspiracy.

Now, Sir, the reasons given for the detention of these men without trial are these :

- (1) that there exists a revolutionary conspiracy :
- (2) that revolutionary crime has been committed by these persons ;  
and
- (3) that it is very difficult to bring the offenders to justice.

Sir, the grounds adduced in support of the third reason are in the official words as follows :

“Terrorism of witnesses and juries, the failure of juries to return verdicts in accordance with the evidence, the murder of witnesses and persons who have confessed or turned King’s evidence, the fear of witnesses to disclose facts within their knowledge, all combine to render justice unobtainable under the existing law. They have already operated in more than one recent instance.”

Sir, these are the words which as Governor of Bengal Lord Lytton said when the Bengal Ordinance was passed.

Sir, on the face of this important and serious utterance, may I point out to the Honourable Members of this House and to my Honourable friend the Home Secretary, in particular, that the refutation of all the allegations in the said utterance by my leader Pandit Motilal Nehru on the floor of the Assembly, proving to demonstration that there was absolutely no foundation for any of the fears entertained by the then His Excellency Lord Lytton, have remained up to this day the last word on the subject. It is not for me to repeat the challenges that Punditji threw in the face of Sir Alexander Muddiman, the then Home Member. Sir, I may only be permitted to quote here what he said in referring to the one case that had happened in 1908, where an approver was killed by his co-accused. Sir, Punditji asked :

“Is it fair, is it just, to go into the facts of any case which happened before the year 1919, when the Royal Proclamation extending general amnesty to those involved in previous cases was made ? By recalling these facts to your assistance—facts which happened before 1919—you are stultifying yourselves, you are stultifying the Royal Amnesty. If you do not take any of these cases into consideration, I challenge the Honourable the Home Member to show even a single instance of the use of threats, ill-treatment of approvers and witnesses and intimidation of jurors that has been relied on in all the Government pronouncements.”

Sir, it has been said that from the time these men have been taken, revolutionary crime has not been much in evidence. It is no doubt a fine argument. Sir, relying on the very same argument one is entitled with better

reason to infer from the actual fact of the discovery of some bombs since their arrest and detention, that all these men are being wrongly detained and that the real men, the culprits, are still at large.

In this connection, Sir, I may be permitted to refer to a statement made by Lord Lytton in the presence of some of the Bengal Members of the Indian Legislature at a little conference at which I was fortunate to be present with at least two more Honourable Members of this House, being very kindly invited by His Lordship. Sir, I venture to call this statement an admission, a serious admission, on the part of His Lordship. Sir, the statement, in the language of my Honourable and esteemed friend, Mr. Goswami, runs as follows :

“The people who had not been proceeded against, that is to say, people who have been detained without trial, were people who had committed no crimes but were prevented from committing crimes.”

Sir, I submit I am not aware of any system of law which provides punishment of a person on the mere suspicion that he may cherish a design to commit crime. Sir, no wordly system of law sanctions such a procedure, nor does the present political condition of India justify the same.

Sir, there is another plea which the then Home Member adduced in the other House in opposing a similar non-official Resolution to which I shall refer. His plea was that these severe steps were necessary for the personal safety of some high officials. Sir, the very apt reply which my esteemed friend Mr. Goswami gave on this point in another place I may be permitted to read out to the Honourable Members of this House. Mr. Goswami said :

“Sir, that is a very bad justification of such a serious step, because, after all, there are other means of protecting these high personages, Governors of Provinces—if they are among the persons concerned ; because their safety is mentioned by Sir Alexander Muddiman—have a substantial bodyguard, for the upkeep of which we have got to pay a large sum of money. They have got a very huge staff of armed policemen. That also costs money. It is not that we Indians have been niggardly about the protection of high personages. The whole of Calcutta is full of the C. I. D.—for whom ? Not for my benefit, but for the benefit of high personages ! When Lord Irwin went out, outside his official tour programme, to some obscure village outside Calcutta last winter, places all round Alipur were filled with policemen, lest His Excellency might stray from the right path and be in peril. There are other means of securing the safety of these great people, and I say, on principle—and I am speaking very seriously—even the lives of the highest officials are not more sacred than the liberties of the people.”

Sir, I fully agree with the view contained in the passage I have just read.

Sir, what I want to impress upon the House is that the Government have no justification in pursuing this repressive policy. They have no justification in curtailing the liberties of so many of our countrymen in the name of law and order without trying them in the open court of law. Sir, it violates an elementary principle not simply of British justice but of all justice when a man is condemned unheard. And this violation of elementary justice amounts to a crying scandal against humanity when the condemnation is followed by a prolonged period of incarceration the duration of which no human being can ascertain. And yet, here, in India, under a Government which prides itself upon its civilisation and enlightenment, we find a daily perpetration of this scandal and offence. Sir, this repression will more and more embitter the feelings of the people, and in the words of Professor Sidgwick

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will create that dangerous sympathy with criminals punished if the punishment inflicted is too severe. It is, Sir, exactly what is happening in India.

Now, Sir, I dispute the very basis of the Honourable the Home Member's argument. I deny— and coming from Bengal, a province which is the worst sufferer under the repressive policy of the Government, and having some acquaintance with the affairs of my province, I have a right to deny—the real existence of a true terrorist conspiracy in Bengal. Sir, I purposely qualify the words “existence” and “terrorist” because I submit that a real terrorist conspiracy is not exactly such a hole and corner affair as many people would fain have us believe. If it is at all of any considerable magnitude—and it would be idle to call it a terrorist conspiracy unless it were of considerable magnitude—it is bound to make itself felt in a thousand different ways; its shadow would stalk over the land and strike a vague feeling of uneasiness—and apprehension even into the hearts of people who might have no direct cognisance of its existence. Sir, I submit nothing of the sort is now perceptible anywhere.

Sir, even if we admit, for argument's sake, the existence of some sort of terrorist conspiracy in the country, what is there to connect the conspiracy with the persons arrested and detained without trial? If there is evidence in support of such connection, why is not the evidence sifted in a court of law? And if the evidence is not such as will bear examination in an open court of law, what justification can any Government have for detaining people in prison upon the strength of such weak and one-sided evidence? Or will it be contended that the Government does not produce such evidence in court for fear of jeopardising the lives of their witnesses? Sir, a more lamentable and laughable confession of impotence on the part of this so mighty a Government, it would be impossible to conceive.

Sir, I now come to the second part of my Honourable friend's Resolution, namely, his plea for the release of all other political prisoners convicted or under trial after their cases are considered by a Committee, the suggested constitution of which is such as to my mind ought to be accepted even by my Honourable friends opposite. Sir, this is a point which it would be useless to enforce by detailed considerations of argument or expediency. I would only urge the Government to stretch their imagination and statesmanlike foresight to the height of a great argument.

Sir, before I resume my seat, I would say a few words by way of appeal to my Honourable friends opposite for whom personally I have the highest regard. Do not misjudge the national character so grievously; and let me tell my Honourable friend the Home Secretary that it is this radical and fundamental misconception regarding the whole character and outlook of our mental being which lies at the root of your long and interminable series of administrative blunders. Please remember that in the affairs of men and nations, confidence begets confidence. Remember what one of your noblest political thinkers has said, namely, that magnanimity is not unoften the truest wisdom in politics. Take your courage in both hands; do not be stopped by pettifogging considerations of immediate loss or immediate gain. Proclaim, I shall not call it a general act of amnesty but a general act of oblivion for all.

political offences of the past and see what an immense and immediate response you will get—what a spontaneous leap-forward of that latent feeling of loyalty and grateful confidence which lies deep down in the hearts of our people—a loyalty and confidence which will pay you a thousand times over for whatever temporary lack of prestige your police and Criminal Intelligence Department may have to suffer.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab : Nominated Non-Official) : Sir, if a lion was brought into this room and shut up with us here, the House ought to picture to itself what fun it will create. In the same way, Sir, if these dangerous people are let loose on the public, I do not think the public will be very pleased, and naturally they will go in for those who let them loose, i.e., the Government.

THE HONOURABLE SETH GOVIND DAS (Central Provinces : General) : Lala Lajpat Rai who is from your own province was also in jail. What do you think of it ?

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : I think perhaps he then deserved it. Sir, there are two reasons for which I have got up to take part in this debate. One is that perhaps, later on, we may be called upon to vote, and I would rather like not to give a silent vote without giving my reasons for it. The second is the experience of the same sort of trouble that we have had in the Punjab. There was a gang, Sir, called the Babar Akalis, who so terrorised the country that not a single witness would come forward nor would anybody give any clue as to where they were, because if that was done, the Babar Akalis at once knew of it and the man who gave the clue was reformed, as they used to call it. That meant that he was to be killed. Such a large number of people were killed, that people did not even like to get into the police, and nobody would raise the police, because it was considered that whoever did it would be assassinated. I was chosen by the Government to supply this police, and within a very short period I raised about 175 men with horses and sent them there, because it was known to the Government that I neither cared much about death nor about assassination. In course of time, all these *jathas*, these dangerous people, were wiped out. They were either killed or brought to book. The same thing happened in my own district. There were some desperadoes who got hold of arms and went on killing people right and left and it was a long time—months—before order was restored. Knowing all these things, one naturally does not want such a state of affairs to occur again anywhere. It was stated here by one of my friends that “ we are all of this opinion ”. I do not know what he meant by “ all ”. Perhaps he meant “ all of his way of thinking ”. There are lots of others who do not think with him. I think, Sir, it is the weakness of the Government which in a way has been at the bottom of this, that the people try to become dangerous. If these men who are helping in a way the Bolsheviks, knew what the Bolsheviks have done to their own people, they will find out that such people have not only been sent to jail, but brutally killed in the streets and assassinated. I think this is rather a very bad way of doing things, but it is an effective way, and sometimes it does stop people doing such things. We must also look at it from the taxpayer's point of view. It is rather hard that at one time these people should be brought to book, and Government should spend lots of money on pleaders and



[Sir Umar Hayat Khan.]

on the witnesses, and directly they are put into jail, you release them by amnesty and again the same thing happens. I think therefore, Sir, if sections 107 and 110 of the Code, which embody the principle that prevention is better than cure, are used, lots of people of this nature who become dangerous can sometimes be put into jail or asked to give security, and I think it is for the good of the administration that these people should be detained, as they might otherwise be killing innocent people, who are detailed to look after them. I hope, Sir, that unless Government is assured that these people will not take to the same methods, the Government will not allow these men to be released. Because it is a well-known fact that if a man becomes an enemy and if you get hold of him and then give him a beating his enmity becomes redoubled ; and I think no sane man would think of releasing a redoubled enemy to take his revenge when he is released. With these words, I oppose this Resolution.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadian) : Sir, I rise more to make a certain request to you than to speak on the Resolution. The Resolution consists of two parts. Clause (a) is complete in itself. Clauses (b) and (c) relate to the same question—the setting up of a Committee and releasing such prisoners as are held not to be guilty by the Committee. The Honourable Mr. Haig, Sir, in speaking on the Resolution raised two different sets of objections to these two parts of the Resolution. With regard to the first he raised an objection on its merits, as well as an objection on the score of its language. He found some difficulty in understanding how there could be an unconditional release of all convicted persons who have not been found guilty. I may assure him that we on this side have not found it so difficult to follow the language : I quite agree that we do not claim to have the same intimate knowledge of the King's English ; but we understood it to mean that people who, though convicted are not found guilty of or charged with any act of violence, should be released. The emphasis is on the act of violence—they were not convicted of any offence involving violence or charged with any act of violence. The Resolution as drafted may be wanting in correctness of idiom, but one who has been in India for a long time not only knows the habits and customs of the country, but also the English used by us,—Indian English. Therefore, if there was any slight difficulty, the difficulty was not such as really to puzzle him to the extent that he said he was puzzled. My Honourable friend who has moved the Resolution has made a very definite request in this part of the Resolution, namely, the unconditional release of all persons convicted for their faith or opinions, and not for any offence involving violence, or charged with any act of violence. I think that is a perfectly tenable proposition. As I said I will not speak at length on the merits of the Resolution ; I wish to say only that I entirely associate myself with the demand contained in this part of the Resolution.

With regard to the second portion of the Resolution there is some little difficulty, I admit ; a demand to set up a Committee to revise the decisions of courts of law would be most difficult to comply with. The Honourable Mr. Haig has in a way twitted us for asking for a Supreme Court, and hoped that the Supreme Court would not be asked to try this kind of cases. I really do not feel very much oppressed by his charge because, if the Supreme Court were here

I have no doubt that it would take up cases of exactly the kind which my Honourable friend is contemplating in the Resolution. The Privy Council has held over and over again that it was the prerogative of the King's Court to revise all convictions which have resulted in injustice by reason of failure to observe legal processes and of violation of rules of natural justice. We maintain, Sir, that in many of these cases, people were convicted either on hearsay evidence, or upon the uncorroborated testimony of accomplices. Many cases of this sort have come to the notice of the public through reports of proceedings of the courts in the newspapers and they are eminently fit cases for an impartial Committee, in the absence of a judicial tribunal, to look into and see if in some cases courts which have been domineered over by the executive have acted unjustly and convicted persons without observing legal processes and by violating the rules of natural justice. It is such cases apparently that my friend is referring to, and it is a very legitimate request I should think. But, Sir, there may be some Members of this House who may feel inclined to vote for part (a) but not for part (b) of the Resolution, and therefore I would request you, if you possibly allow me to make that request, to put the two portions of the Resolution separately.

One word more, Sir, about my Honourable friend, Mr. Haig's speech. He apologised for the Honourable the Home Member not being here; but I assure him that he made a very powerful propagandist speech in vindication of the executive and the bureaucracy, and his Chief would not probably have improved upon that; he has drawn a very lurid picture of the disorders in this country by quoting the Kakori case and a few other cases. But I will remind him that this is not the first time that we are listening to such arguments; I would ask him to remember that he is dealing with a country which is 16 times as big as Great Britain and has a population eight times as large; and if my Honourable friend has read, as he ought to have read, about the disturbances which occurred all over Europe and America with reference to the Sacco-Venzetti executions, and that in Paris alone during a single riot the casualties exceeded a thousand, he will see that to say in a country so large as India, inhabited by three hundred million people, some cases of disorders have arisen now and then and to use that as an argument for depriving people of their liberty by executive act, is not a convincing argument from the Indian point of view. He says he is anxious about detentions without trial, for they would expose the Government to popular prejudice and that he is guided by the same considerations of humanity as the opposition Benches and so on; but all these must be shown by action; of course professions are good in their own way, but we want them to be tested by action. Therefore, Sir, I hope that he will show his sympathy by advising his Government to take prompt action to give effect to the Resolution of my Honourable friend, though he may not accept it in this House.

One more word about my Honourable friend, Colonel Sir Umar Hayat Khan. He has told us about the distinguished services he rendered to the Government in suppressing disorders. Everybody is quite thankful to him. But he made one observation that he was never afraid of assassination and that he had plenty of trust in his countrymen. I have, however, a distinct recollection that, at the time of recruitment there were widespread reports in the newspapers that Sir Umar Hayat Khan was so unpopular that he always

[Mr. V. Ramadas Pantulu.]

moved about with a bodyguard and was always armed, owing to the disaffection of his countrymen. I read it in the newspapers and other publications at the time ; but whatever that may be I end my speech with the request that you, Sir, may be pleased to put the Resolution in two different parts.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : That is wrong. I have always been my own bodyguard.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-official) : Sir, I would not have risen to trouble the Council with my views on this Resolution but for certain observations which fell from my friend, the Honourable Mr. Ramadas Pantulu. In supporting clause (b) of the Resolution he has made certain significant observations. He has hardly realised what this clause means in plain language.

I think he is a very shrewd and experienced lawyer, and I do not believe for a moment that he does not understand the real absurdity of this clause (b), but he has deliberately got up for the purpose of a mere formality to support this part of the Resolution. Now, what does the Honourable the Mover demand by this part (b) of his Resolution ? He wants to constitute a Committee which will consist of two members elected by the Legislative Assembly, one member elected by the Council of State, one member nominated by the Government and an Indian Member of the Executive Council of His Excellency the Governor General ; that is, in all five members. What will be the functions of this Committee ? They will review the cases of all political prisoners convicted or under trial. The simple meaning of this is that all cases where political prisoners have been detained or in all cases where they are undergoing sentences in all cases in which the Government of India have exercised their powers under the special Acts and Regulations, and in such cases where the Governor General in Council has delegated those powers to Local Governments under the Devolution Rules, all such cases are to be revised by this very important and extraordinary body of persons suggested by the Honourable the Mover. Now, a moment's reflection will show what an amount of inconvenience, what an amount of absurdity underlies the principle which has been advocated by my Honourable friend. The result is, that these people will sit in a tribunal, and the Governor General will have to place all facts, all statements, all evidence recorded by them and on which they have acted, for the scrutiny of this tribunal. Can you ever realise a more absurd proposition than that ? In the first instance, you are aware, and every Member of this Council is aware, that the Governor General acts under the special provisions of the Act ; he acts on certain evidence ; he acts on certain statements ; he acts on certain police inquiry and on depositions made by respectable persons who have refused to go to Court for various reasons to give evidence. Now, if those people are put on trial, and if the respectable gentlemen who have given evidence are again summoned to give evidence, they will certainly refuse, as they have done in the past, to give their evidence, not because their statements were not correct, but because they are afraid of being terrorised, of being shot, of being killed, they are afraid of being molested by these hosts of prisoners and by those men who are interested in them. Do you expect therefore the Government of India to expose all the information which they have collected and lay it before this

tribunal ? What an act of bad faith it would be on the part of Government if they were to accede to such an unreasonable request ? Who will in future in cases of conspiracies, in cases of unlawful associations, give their evidence before Government ? Will they not be afraid to do so ? Is it not unreasonable to expect such people hereafter to come before the executive and give evidence if Government commits such a breach of faith ? Sir, such a Resolution is very ridiculous. And further, to expect the Governor General after the fullest inquiry in Council or the Local Governments under the powers given to them, after the fullest inquiry made by them, and after they have come to a decision and taken action, to appoint the suggested tribunal to sit in judgment on the Governor General in Council is, to say the least, really preposterous. Can you realise a more absurd proposition than that ? That, Sir, is the plain meaning of part (b) of the Resolution. It cannot appeal to any ordinary intelligence. I think, therefore, the Government of India is perfectly correct in not agreeing to such an unreasonable proposition as the one embodied in the Resolution.

Now, Sir, as regards clause (a), I do not wish to trouble the Council with any further arguments. It has been made perfectly clear by the Honourable the Home Secretary, that the policy of the Government in this matter, as announced not only by His Excellency the Viceroy but by various high officials, is that they do not desire to detain people for a single minute longer than the circumstances of the case require. There is no pleasure in detaining these people in jails. It causes a serious prejudice against Government as a rule if they take action under these special Acts. It causes a lot of worry and annoyance to Government ; it also causes a lot of unnecessary expenditure to keep and feed these people in jails for long periods, and there is no pleasure for Government to resort to such procedure. The Honourable the Home Secretary also pointed out in the course of his very lucid statement that only 40 more prisoners in Bengal remain still under detention, and the Government of India have promised that....

**THE HONOURABLE SETH GOVIND DAS :** Does the Honourable Member think that the number is too small ?

**THE HONOURABLE SIR MANECKJI DADABHOY :** Please do not disturb me. The Government of India have promised that by the end of this year they will be in a position to discharge all these people provided the existing circumstances continue. In view of the declaration of such a definite policy, is there any sense in pressing a Resolution of this nature ? The Government of India is anxious to release these prisoners which will of course depend on their own deportment, their own attitude, and their good conduct, so as to enable the Government of India to show clemency. I hope, therefore, that my Honourable friend over there will see his way, in view of the statement made by the Honourable the Home Secretary, not to press his Resolution.

**THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) :** Sir, I do not want to give a silent vote, and I propose to support the Resolution, especially clause (a) of it in a few words. The question has been so often debated and has been discussed threadbare in the other place, in the Press, as well as on various platforms that, I think, it is almost impossible for any one to bring in any fresh arguments for or against the proposition. Sir, I have been noticing, and it must be clear to all the Honourable Members, that there has been a change

[Mr. P. C. Desika Chari.]

of heart on the part of Government in the policy they have been pursuing in regard to these detenus, and their treatment of the detenus has undergone a very considerable change, and I believe the Government have come to the conclusion that it is not desirable that they should persist in following the old policy and detain them in jail for unduly long periods without trial. I find pronouncements have been made almost to that effect time and again, and I believe the recent statesmanlike action of His Excellency the Governor of Bengal, Sir Stanley Jackson, has shown that it is only a continuation of the policy of the Government of India which has been given effect to by the release of so many prisoners, with reference to whom part (a) of the Resolution deals. I think, Sir, a bold policy on the part of Government will create a good atmosphere, and even after the Government have come to the conclusion that the present atmosphere has considerably improved, and it is very desirable that these prisoners should be released as soon as possible.

I would appeal to the Government to take prompt action in the matter so that the result of the generous action may be appreciated. If this action, which I believe will be taken very shortly, were delayed, the result of it will be that it will not be appreciated by the people and the advantages which would accrue to the country, to all sections and all political parties, would be lost. I therefore appeal to the Government to accept at least clause (a) of this Resolution, and as regards clause (b), I think there is a good deal of force in what the Honourable the Home Secretary said, that it is not desirable to constitute a Committee to sit in judgment over the decisions of course established by law. I take it that what the Honourable Mover meant by clause (b) was that there ought to be a sort of Committee to recommend to the Government the exercise of clemency in certain cases where the sentences are severe or where they think the conditions existing at the time when the convictions were secured were such that the cases were prejudiced by the political conditions existing at that time. With these words, Sir, I support the Resolution before the House.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY : Sir, I have already explained that the first part of my Resolution asks for an amnesty only for those who have not been guilty of, or been charged with, any act of violence. The Honourable the Home Secretary urges in reply that in that case we shall have to set free all persons who have been found guilty of sedition. We all know how that section is being gradually stretched and strained so that almost all speeches uttered by anyone on any public platform may, if the Government so please, fall within the section and even the Privy Council has declared itself powerless to interfere with any conviction for sedition. My Honourable friend then refers to the Kakori case, which, I submit, lends strength to my argument, for I have already stated that these cases are not in any way connected with those now in any prison and should not in any way affect their case.

As regards the complicity of Sachin Sanyal in this case, the less said the better. This gentleman had openly been writing a book making a case for the Government. Perhaps he is now no longer in the good graces of the police and that may, for aught I know, be the reason for his being implicated in this case. I have then advocated the constitution of a Committee which may

attract the confidence of the public, because the public has no confidence in the administration of criminal justice in the country, but the Honourable Member does not choose to deal with that point at all. Government have no doubt set free a good number of these persons and our thanks are due to them for what they have done, but may we not appeal to them to be a little more magnanimous and to deal with these persons once for all instead of having their future hanging in uncertainty upon the whims of the Criminal Intelligence Department? The Honourable Sir Maneckji Dadabhoy characterises the Committee as a cumbrous one and that the Government cannot place the evidence in their hands in possession of such a Committee. I am indeed sorry the Honourable Member has so low an opinion of himself, not to speak of the other members of the Indian Legislature. The Government have placed such evidence before High Court Judges, and even before District Judges and Magistrates, and I see no difficulty in their placing it before such a responsible Committee.

THE HONOURABLE MR. H. G. HAIG: There is very little that I need say in answer to my Honourable friend. The main point made by Government, I think, is clear. The policy which has been adopted, which has been forced upon them by circumstances, is being worked in a reasonable way and being worked with success, and they would urge this Council not to press them to depart from a policy which is being entirely justified by the course of events.

THE HONOURABLE THE PRESIDENT: As two Honourable Members who spoke desire to vote for one clause of the Resolution and to oppose or at least not to support the other clause of the Resolution, I am putting the Resolution in parts.

The question is:

“That the following stand part of the Resolution:

‘This Council recommends to the Governor General in Council that he be pleased:

- (a) to order the unconditional release of all such convicted or under-trial political prisoners in Indian jails as have not been held guilty in an open trial by any court of law or charged with any act of violence and of all political detenus whose trial in a court of law is not contemplated.’ ”

The Council divided:

AYES—14.

Alay Nabi, The Honourable Saiyid.  
Desika Chari, The Honourable  
Mr. P. C.  
Govind Das, The Honourable Seth.  
Khaparde, The Honourable Mr. G. S.  
Mukherjee, The Honourable Srijiut  
Lokenath.  
Padshah Sahib Bahadur, The Honour-  
able Saiyed Mohamed.  
Ramadas Pantulu, The Honourable  
Mr. V.

Rama Rau, The Honourable Rao  
Sahib Dr. U.  
Ray Chaudhury, The Honourable Mr.  
Kumar Sankar.  
Sankaran Nair, The Honourable Sir.  
Sethna, The Honourable Sir Phiroze.  
Sett, The Honourable Rai Bahadur  
Nalininath.  
Sinha, The Honourable Mr. Anugraha  
Narayan.  
Subrawardy, The Honourable Mr. M.

## NOES—27.

Akbar Khan, The Honourable Major Nawab Mahomed.

Akram Husain Bahadur, The Honourable Prince A. M. M.

Bell, The Honourable Sir John.

Berthoud, The Honourable Mr. E. H.

Brayne, The Honourable Mr. A. F. L.

Charanjit Singh, The Honourable Sardar.

Commander-in-Chief, His Excellency the.

Corbett, The Honourable Sir Geoffrey.

Dadabhoy, The Honourable Sir Maneckji.

Das, The Honourable Mr. S. R.

Froom, The Honourable Sir Arthur.

Habibullah, The Honourable Khan Bahadur Sir Muhammad, Sahib Bahadur.

Haig, The Honourable Mr. H. G.

Hooton, The Honourable Major-General Alfred.

Manmohandas Ramji, The Honourable Sir.

McWaters, The Honourable Mr. A. C. Misra, The Honourable Pundi Shyam Bihari.

Muhammad Buzlullah, The Honourable Khan Bahadur.

Ram Saran Das, The Honourable Rai Bahadur Lala.

Rampal Singh, The Honourable Raja Sir.

Singh, The Honourable Raja Sir Harnam.

Stow, The Honourable Mr. A. M.

Swan, The Honourable Mr. J. A. L.

Tek Chand, The Honourable Diwan.

Thompson, The Honourable Sir John Perronet.

Tudor-Owen, The Honourable Mr. W. C.

Umar Hayat Khan, The Honourable Colonel Nawab Sir.

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question then is :

“ That the following Resolution be adopted :

‘ This Council recommends to the Governor General in Council that he be pleased :

(a) to appoint a committee consisting of two members elected by the Legislative Assembly, one member elected by the Council of State, one member nominated by the Government and an Indian Member of the Executive Council of His Excellency the Governor General of India as President, to review the case of all other political prisoners convicted or under trial ; and

(b) to order the release of all such prisoners as are not held to be guilty by this committee.’ ”

The motion was negatived.

### RESOLUTION *RE* DEVELOPMENT OF NEW INDUSTRIES.

THE HONOURABLE SETH GOVIND DAS (Central Provinces : General) :

Sir, I rise to move the Resolution which stands in my name. It reads as follows :

“ This Council recommends to the Governor General in Council to allot a sum of fifty lakhs per annum for the coming ten years in the annual Budgets for the development of new industries in India under the direct supervision and control of the Government of India.”

In connection with this Resolution, Sir, we should first of all realise the gravity of the economic conditions of the people of this country, and for this, Sir, we should review the history of our industrial progress for the last 50 or 60 years.

At the very outset, I am ready to admit, Sir, that we have made some progress in this direction during this period, but the question is whether this progress has been satisfactory, and whether it has been sufficient to solve the problem of the poverty of the people of this land. From the last Census

Report we find, Sir, that out of the total population, only 10 per cent. is dependent upon industries. But if we minutely examine this figure, we find that out of this small population, only 1 per cent. is directly dependent upon industries carrying them on in an organised way, and the rest 9 per cent. is scattered throughout the length and breadth of the country, carrying on remote concerns in an unorganised manner. Anybody who is acquainted with this kind of industries will at once realise that these industries in the mufassil are simply supplemental to the agricultural works, and, therefore, a good number of the population—I mean this 9 per cent.—which is dependent on such concerns is partly dependent upon agriculture. Even if for argument's sake, we admit that this 10 per cent. of the population is dependent upon industries, then too we find that the people dependent upon agriculture are increasing decade by decade, or, in other words, the burden on the soil is increasing. According to the last Census Report, out of the total population, 72 per cent. is directly or indirectly dependent upon agriculture, whereas, Sir, in 1891, this percentage was a little above 60. It clearly shows that our industrial progress has not been able to employ so much population that the burden on the soil may not increase. Before the advent of machine-made goods we had no doubt a large number of our population carrying on cottage industries. Though these industries were small, they were flourishing. After this advent on account of the competition of machine-made goods, both produced locally and imported from abroad, this population suffered and suffered so much that it had to take to the land. The result is clear, that to-day, we have more people dependent upon our land than the land can support. This is, Sir, in fact the main reason of the staggering poverty of the people of this country. We frequently hear that India is a rich country, or in other words, we have vast resources, resources of land, resources of minerals, resources of industrial development, and so on. It has been said that we are poor because we have not yet utilised these resources to the best advantage of the people of this country. But, then, who is responsible for not getting these resources utilised to the best advantage of the people of this land? Government say they are not responsible, and in proof of this they say that they have appointed so many Commissions and Committees on this matter. But, Sir, we should see the net result of these Commissions and Committees. The Industrial Commission came in 1918, and in the years that have gone by we see little progress. The Provincial Industrial Departments are in a morbid condition, sometimes conducted by unsympathetic officers, and sometimes starving for want of funds. Then came the Fiscal Commission, and slowly again, the Tariff Board in consequence. The Tariff Board may spend lakhs and may make lengthy reports only to find their recommendations—at least their important recommendations—shelved.

**THE HONOURABLE SIR MANECKJI DADABHOY** (Central Provinces : Nominated Non-Official): Which recommendation was shelved?

**THE HONOURABLE SETH GOVIND DAS**: So many. These attempts could not solve the problem. They no doubt gave some material to the Director of Information for spreading wild stories, for spreading stories in high flown language, about the moral and material progress of India. It will be said that the average income of the people of this country is increasing. In 1900 it was Rs. 30, and in this very House, in 1914, the Honourable Mr. Cook declared that it was Rs. 50. It is said that it has further increased now. So far, no inquiry



[Seth Govind Das.]

worth the name has been made in this direction, and therefore, we cannot say how far these figures are correct. The Taxation Enquiry Committee was expected to throw some light on this problem, but it found our statistics available hopelessly inadequate for this purpose. Even if we admit this figure to be correct, this rise is a mere nominal rise, and it is due to the increase in price, or in other words, to the fall in the purchasing power of the rupee. If we compare the average income of the people of India with the average income of the people of other countries what do we find? In 1914, when the average income of the people of this country was £3, the average income of the people of Germany was £30, of France £38, of the United Kingdom £50, and of the United States of America £72.

(At this stage the Honourable the President vacated the Chair which was taken by the Honourable Sir John Bell).

Even at the time of the War, we could not increase the average income of the people of this country. The other countries seized this golden opportunity and we were so backward that we were simply watched and saw how our own market was exploited by these foreigners. A handful of millowners and others did earn no doubt at that time.

But these profits were also very temporary and they were followed by great depression. To-day the depression is so great that even our most organised and established industry, I mean the cotton industry, is in a precarious condition—not to speak of other industries. This, Sir, is a brief history of our industrial progress during the last fifty or sixty years. In fact it is not a history of any progress worth the name. But, on the other hand, it is a history of how we have allowed ourselves to be exploited by foreigners. We went on killing our cottage industries without replacing them in a sufficient strength by modern industries; we went on exporting our raw material to other countries, to be returned to us in manufactured form and thus giving all the profits of manufacture to others; and the Government went on appointing Commissions and Committees.

Now, Sir, what is the position to-day? To-day the industrial department is a Provincial department and a transferred subject; because it is unfortunately a nation-building department. Among the transferred subjects it is a miscellaneous subject; and when the poor Minister cannot look after the important transferred subjects on account of want of funds, how can he look after this miscellaneous one? In addition, Sir, the Minister is obliged to consider non-Brahmin and such like communal interests and to advance the interests of his own community and, under the present constitution, he is not free to act as he thinks proper. If by chance or accident there is a competent Minister and he really wants to do something, then the question of money stands in the way. Fresh taxation at a time when the industries and trade are under a gloom of unprecedented depression, is not a thing which can be easily thought of. So, Sir, industries cannot be improved without fresh taxation, and fresh taxation cannot be imposed without the improvement of industries. It is really moving in a vicious circle. The Taxation Enquiry Committee was appointed to show the way out of this difficulty, but I am not aware of any province which could take advantage of the recommendations of this Committee even if we grant that they are useful. I do not see

any way out of this difficulty, I do not see any salvation until and unless the Government of India intervenes, and this intervention should not be merely by the appointment of more inquiry committees, but by a real move in the matter. Move means capital and organisation. As for capital, I ask for a small sum of Rs. 50 lakhs a year; a sum like this may be considered a big sum for an individual province; but for the Government of India which is spending Rs. 40 crores every year on the military alone, and that two for Imperial purposes, it is not at all difficult to invest—it is not expenditure, it is only an investment—this small trifling sum of Rs. 50 lakhs every year in industries. I do not mean, Sir, that Provincial Governments should have nothing to do with this programme. I want close co-operation between the Central and the Provincial Governments. Of course I want the funds to be provided by the Central Government because the provinces cannot afford to provide this money. When the funds are provided by the Central Government the supervision and control will certainly be in their hands.

I am not asking for anything new. State aid in a variety of ways to industries is a characteristic feature of modern nations. A recent example of this is the aid of the British Government to the Anglo-Persian Oil Company, and more recent still is their aid to the cinema film industry. Nearer home we have the example of the Mysore State which is carrying on many successful industries. His Excellency the Viceroy himself was pleased with these activities of the State during his recent visit. Then, again, Sir, the Government of India is also not an exception. They run the biggest industry to-day in India—the Railways are theirs.

In conclusion, Sir, I beg to point out that in spite of the best and varied resources India to-day is the poorest country in the world. One-fifth of the population of the world is not living like human beings. It is badly fed, badly clothed and badly housed. The Government, if it boasts to be a civilised Government, should come forward and help the teeming millions of this land. If the Government really want to increase the national wealth of this land, if they really want to make the people more wealthy and prosperous, if they really want to raise the standard of the people's living, if they really want to provide good employment for the excess number of people who are starving for want of employment or are pressing on the land, and if the Government really want to save the country from foreign exploitation, they should open one industry after another in a systematic manner. If that is done, I am sure the problem will be solved. It is not possible for any individual or for any limited concern to take up this work now. The risk of foreign competition is before them. But if the initial difficulty of opening these new industries in the face of foreign competition is removed by the Government, I am sure that in future many individuals and many limited concerns will come forward to take up this work with the necessary capital and the necessary technical skill. During the War, Government themselves realised that India would have been a far more important source of strength to the Empire if her national resources had been utilised more fully and if her industries had been developed. And though it is late, there is yet time to start new industries and to prevent old established industries from going down. With these words, Sir, I move my Resolution, and I hope this House will give that consideration to the Resolution which the importance of the subject deserves.

**THE HONOURABLE MR. A. C. MCWATTERS** (Industries and Labour Secretary): Sir, the Resolution which has been moved by my Honourable friend seeks to impose a somewhat formidable liability upon not only the present Finance Member but upon future Finance Members, whoever they may be; and I think it is important at this stage that I should indicate what the attitude of the Government is towards this Resolution. Whether the figure suggested may be considered trifling, as by the Honourable Mover, or perhaps ambitious, the Resolution does raise two important questions of principle, the first constitutional and the second financial. I think that the Honourable Mover himself realised, perhaps somewhat dimly, that there was a constitutional question involved, and I should like to make that position quite clear to the House in the first instance, because the constitutional position alone would make it somewhat difficult for the Government to accept this Resolution as it stands. The position is that under the constitution the development of industries is a provincial transferred subject. There is one exception—the Governor General in Council can declare after consulting Local Governments that the development of any particular industry may be treated as a central subject if it is expedient in the public interest. This position was arrived at, not by chance, but after a great deal of discussion by the Government of India in their despatches on constitutional reform, by the Functions Committee, and by the Joint Committee of Parliament; various views were expressed, I admit; but, finally, the result arrived at was that normally speaking the development of industries should be a provincial transferred subject.

In certain cases the Government of India can take action to make the subject central, but this refers, as the context shows, primarily to existing industries of national importance; there was no intention of making the stimulation of new industries a central subject. It is quite clear that the development of new industries was regarded by the Functions Committee as well as by the Joint Parliamentary Committee as a suitable subject to place under the charge of Ministers. I can quote the exact words of the Feetham Committee. This is what they said:

“The development of industries on which, in our opinion, the future of India so much depends, should be under the control of the representatives of the people.”

They felt that such control would be more intimate, and that the Government of India were more aloof; that small industries, and new industries in particular, would be more likely to be efficiently helped by the representatives of the people who would be able to take a direct local interest in the stimulation of these industries. Anyhow, that is the present position. In view of that position it is constitutionally impossible for the Government of India to allot in the Central Budget a lump sum or any sum unless the development of particular industries has been definitely declared to be a central subject in the general interest.

I think, Sir, the Honourable the Mover was a little unfair to the Provincial Governments when he described their Industries Departments as being,—I think he used the words “in a morbid condition”. Possibly he meant “Moribund”. I think that is unfair, because I happen to know that there are a good many provinces in which the Industries Departments are functioning and functioning very efficiently too. And apart from the normal work of the departments of Industries, there are at least three provinces which

have passed State Aid to Industries Acts. Such Acts have been passed in Madras, in Bihar and Orissa and in the Punjab, and in all these provinces loans of considerable amount have been given or are under contemplation for new or existing industries. There are also several provinces which have, without actually passing a State Aid to Industries Act, managed to give very large sums to industries. For instance, in the United Provinces, my own Province, there is a Board of Loan Commissioners, who have actually lent large sums of money even without a State Aid to Industries Act. Of course, the fact of the matter is, as the Honourable Mover quite rightly recognised, that the Provincial Governments have been handicapped through want of funds, and that really goes to the root of the matter. It is not that the present constitution is necessarily defective, but that both the Central Government and the Local Governments have in these matters been very much handicapped through want of funds. That brings me, Sir, to the next point, the financial point. I think the House will agree with me that the provision of a large lump sum in the Budget is not the right way to develop industries; in fact, if I may express my own private opinion, I can conceive of no method better calculated to waste public money than the one suggested by the Honourable Member. You want to have first of all the whole field surveyed; you want to have a definite programme worked out, just the sort of programme we are endeavouring to work out in regard to technical education. The Finance Department have quite rightly insisted on having a quinquennial programme carefully worked out. Until you have a programme, there is no good in budgeting for 50 lakhs or 50 crores or any other figure, because the money will be simply wasted. That is one objection, but the financial objection goes even further. The Government of India have definitely declared their financial policy to be the extinction at as early a date as possible of the provincial contributions, and the reason for that is mainly because they wish to allow the provinces to have a fair chance of developing industries and other matters of provincial importance with a reasonable amount of funds at their command. Obviously the best way, at present at any rate, to improve the industrial development in India is to get rid of the provincial contributions and to enable the provincial Departments of Industries to operate with much more funds at their command than they have at present. That, I submit, to the House is the right line of development; you have first to get rid of the provincial contributions, and I think you have also to keep in mind certain other things; you have got to consider your tariff policy; you have got to consider whether there are any forms of taxation which at present press heavily upon industries,—I think you have got to consider whether you have a prior obligation in these matters also.

I think that is really all I have to say in answer to the Resolution. But I think it is important to remember that the functions of the Central Government in this connection are really very wide and very important indeed. The Central Government, in the first place, covers a very wide field of legislation, currency, banking, commercial law, patents, labour legislation, etc., all of which bear directly on industrial development. In the next place, it is a duty of the Central Government to provide cheap and safe means of communication. Here again arises the question of railway rates, and their reduction is certainly one of the best methods of helping industry. Then the Central Government has

[Mr. A. C. McWatters.]

under it a large number of technical departments, such as the Geological Survey, the Forest Research Institute, the Agricultural Institute at Pusa, the School of Mining and Geology, and so on, all of which represent a very large sum indeed provided in the Central Government's budget every year for the development of industries and the development of research in the interests of industries. And, finally, and most important of all, the Central Government has the regulation of the tariff and protective duties. In all these respects, the Central Government is actively concerned and is expending large sums of money on the development of industries, though not exactly in the way of providing a large direct subvention in the Budget. Finally, Sir, I again submit to the House that, both from the constitutional point of view as well as from the financial point of view, there are serious practical difficulties in accepting this Resolution, and it does not seem to me the most practical or suitable method of procedure.

The Council then adjourned for Lunch till a Quarter to Three of the Clock.

The Council re-assembled after Lunch at a Quarter to Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY (East Bengal: Non-Muhammadan): Sir, I rise to support this Resolution with some reservations. It is good that Government should take up the development of industries in India, but I submit that, while doing so, we should take care to see that such development does not pass into the hands of non-Indians so as to enable them to exploit the material resources of India at the cost of the people of India. It is better that the resources of India should remain unexploited than that they should pass out of the hands of Indians to benefit foreign exploiters. For some time past I have been trying to introduce a Bill to safeguard such rights, but Government have proved to be like a dead stone wall against which I am knocking my head in vain. The constitutional objection raised by the Honourable Mr. McWatters may be solved by deleting the words beginning with the word "under" to the end of the Resolution, and I would ask the Honourable Mover of this Resolution to accept that suggestion. As regards the financial objection, I submit the provision of a sum of Rs. 50 lakhs is not too much likely to affect other questions of financial importance.

THE HONOURABLE SIR MANECKJI DADABHOY: Sir, I am an industrialist and I am very anxious to see the development of industries in this country. Therefore, I am in entire sympathy with the Mover of this Resolution so far as the general aspect of his Resolution is concerned. But the manner in which his Resolution is worded is my difficulty in supporting it. Another unfortunate thing is that in discussing the question of industrial progress of India, he as well as the last speaker have spoken at considerable length on the exploitation of Indian industries by foreign capitalists. My Honourable friends forget that in India capital is very shy, and that the people by nature and temperament are conservative and are wedded to agricultural industry. They are not disposed by temperament and also by a lack of certain other things, such as technical knowledge, experience, and so on, to handle the industries of this country. I cannot do

better than point out in a few words the great obstruction to industrialisation of India as stated by the Fiscal Commission. At page 39 of their Report, discussing the various factors which retarded the progress of industries in this country, they stated that they agreed with the Industrial Commission and gave several instances, and those were :

“ the natural conservatism of the people, the inefficiency of labour, the absence of industrial and technical education, the lack of business enterprise, the shyness of capital for new undertakings, and the want of proper organization for utilising such capital as is available.”

These were the chief and fundamental factors which the Fiscal Commission after mature consideration for several months suggested as great obstacles in the way of the industrialisation of India. In order to facilitate the progress and advancement of industries in this country, they suggested entirely new methods other than what were suggested by my Honourable friends, Mr. Govind Das and Mr. Kumar Sankar Ray Chaudhury. They strongly recommended, if India wanted to develop its industries, that foreign capital should be wholeheartedly invited, and that foreign capital was absolutely necessary for many more years in this country. My Honourable friend, Mr. Govind Das has very glibly talked of foreign exploitation. He thinks that every rupee which is brought to this country does not help this country, but that it is all for the benefit of the foreign capitalist who brings his money here and takes it away ten fold afterwards. He forgets that foreign capital employs indigenous labour, hundreds and thousands of people live and get means of maintenance by the advent of foreign capital into this country. Just here, for a moment let me read to the House what the Fiscal Commission have to say on this point. May I remind the Council that the quotation which I am going to read has not been even dissented from by the minority members of the Commission. They have all agreed unanimously on this point as regards foreign capital. At page 157 they say :

“ But when the matter is really examined, there can be no doubt that, though the foreign capitalist may get his profit, the main advantage from the employment of foreign capital remains with the country in which it is employed. In the case of India this is particularly clear. In the earlier part of this report we have mentioned that India suffers notoriously from a lack of capital, and that for her rapid development more capital is urgently required. If, therefore, in addition to her own resources of capital she is able to attract capital from abroad, her development will be accelerated.”

Then, they laid down in most emphatic language the following :

“ Therefore, it is of the first importance that the development of new industries should proceed as rapidly as possible. The more capital is employed in the development of industries, the more rapid will that development be, and therefore the shorter will be the period of the burden on the consumer. Moreover, apart from the intrinsic benefits of increased supplies of capital, the foreigner who bring his capital to India supplies India with many things of which at her present stage she stands greatly in need. It is on the whole the foreign capitalist who imports into the country the technical knowledge and the organisation which are needed to give an impetus to industrial development. It is to him that we must look largely at first for the introduction of new industries and for instruction in the economies of mass production. By admitting foreign capital freely India admits the most-up-to-date methods and the newest ideas, and she benefits by adopting those methods and assimilating those ideas. If she tried to exclude them, the policy of industrialisation which we contemplate could with difficulty be brought to a really successful pitch. We hold, therefore, that from the economic point of view all the advantages which we anticipate from a policy of increased industrialisation would be accentuated by the free utilisation of foreign capital and foreign resources.”

[Sir Maneckji Dadabhoy.]

Therefore, if my Honourable friend has at heart the real interests of this country in the matter of industrialisation, he should not talk against foreign capital and the exploitation of India by foreigners, but assist in inviting foreign capital to this country. So far as the Resolution is concerned, my difficulty in the matter is this. I think that all industries must first originate in private enterprises. That private enterprise would proceed from a knowledge of the various factors in respect of a particular concern or industry, and therefore, the responsibility must, in the first instance, be taken by the promoters of such an industry. I do not believe, except in a very very rare case such as the pulp industry, which, I understand, has been started by Government in Dehra Dun with a great portion of State capital there may be such exceptional cases, but ordinarily I think the enterprise must proceed from private shareholders' money, or private proprietary concerns. Of course, when these concerns are started, and the industries are of a promising character, and where any such industry being an infant industry suffers from unfair competition with foreign production or anything like that, then the Fiscal Commission have recommended the giving of bounties or the imposition of protective duties. Those are the ordinary methods of giving encouragement to industries by the State. But I am not in favour of the State taking upon itself the responsibility of going round the country and establishing manufacturing or industrial concerns. The State will be going out of its own way, and the adoption of such a policy would require a very large sum of money to finance such concerns. In this Resolution my friend the Honourable Seth Govind Das asks for Rs. 50 lakhs to be distributed for this purpose. What is even 50 lakhs in the matter of industrialisation of the country among the 9 great provinces of India? It works out to about 4 or 5 lakhs a year. That will not help even one concern in one province. It cannot perform that great part in the matter of industrialisation which my Honourable friend thinks it would. Though I am in great sympathy with the object of the Resolution, I am not in a position to support it on account of these practical considerations. I do not wish to go into the constitutional part of the question which has been fully dealt with by my Honourable friend Mr. McWatters. I am glad, however, that in a way this discussion will open the eyes of Local Governments, and I should be very pleased to see the Local Governments always ready and willing to help by temporary loans such industries which require money for immediate purposes. But beyond that, I am not prepared to go further. In my opinion, the industries of India must emanate from private capital and within the purview of the recommendations of the Fiscal Commission only, if need be, they can be supported by temporary State loans.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay: Non-Muhammadan): Sir, I appreciate the patriotic motives which have prompted my Honourable friend to bring forward this Resolution. But at the same time, I realise the difficulties which have been pointed out by the Honourable Mr. McWatters. I quite understand, and I believe the Mover agrees with me in what I say, that the prosperity of the country, as some one has said before, rests very largely on its commerce, on its manufactures and also on its means of transportation. India is principally an agricultural country. Its commerce

is fast growing. In that connection, I am tempted to read a sentence or two from a lecture recently delivered by our very able and energetic Trade Commissioner for India in London, Mr. H. A. F. Lindsay. He said :

“ It is not usually realised that India holds so important a place in the world's trade, having advanced from the sixth place in the list of the principal countries in 1913 to the fifth place in 1924. During the last three years, according to the Review of the Trade of India, published by Dr. D. B. Meek, Director General of Commercial Intelligence and Statistics, the volume of export trade has regained its pre-war level, but so far as the import trade is concerned the recovery is still very far from complete.”

I wish he could have made a statement in the same strain in regard to our industries. There is certainly much required to be done in this direction, but I doubt if much can be done in the manner suggested by my Honourable friend. My Honourable friend simply asks for setting apart 50 lakhs and for giving it to the different provinces. How this is to be apportioned, and for what industries, he does not mention. The Honourable Mr. McWatters has explained the difficulties, first the constitutional and then another. But he went further and said that if there were a national industry, which was going to benefit the whole country, the Government of India would recognise that point and perhaps would come to the help of such an industry. After that explanation, I think it will be better if my Honourable friend brings forward some definite proposal for help from the Government of India for such a national industry or industries. In that case, we can take the Honourable Mr. McWatters at his word and get the Government of India to help that industry as best possible. I realise, Sir, that within the last half a century, amongst Eastern countries, Japan has done very considerably to improve her industries, and has done so by subsidising industries and giving help of different kinds. But what exactly they are, and how their constitution differs from ours I am not in a position to say or to offer any constructive proposal to the Government of India. In the absence of that information, I am afraid I cannot support my Honourable friend Seth Govind Das' proposal as it stands.

Then again, there is much force in what the Honourable Sir Maneckji Dadabhoy has said. It cannot be denied that as a rule, the people of India do not have the spirit of what we might call 'No venture, no gain'. In some of the Presidencies this does exist to a far greater degree than in others. So far as one knows, Bengal is the richest province in India, and yet I cannot help admitting that so far as the Indian population is concerned, the rich people in that province prefer to buy land or invest in Government paper, and look askance at industrial investments. It is different perhaps in Bombay, in the Central Provinces or in the Punjab. Therefore, as Sir Maneckji Dadabhoy rightly put it, much depends on the temperament of the people themselves. They might educate themselves to invest in industries. If the people help themselves first by starting industries I do not see why we cannot appeal to Government to come forward to their help if help is needed.

Now, it is not that Provincial Governments do not help industries. Some Provincial Governments do. I have within my knowledge one particular instance to which I would like to refer, and that is in connection with the province of Bihar and Orissa. There is a company known as the Indian Wire Products Company, Limited ; it was going to the wall and one large company which was a creditor was prepared to accept Rs. 2 lakhs in



[Sir Phiroze Sethna.]

debentures for the amount due to it; and the Government of Bihar acceded to the proposal of the company and advanced Rs. 5 lakhs in debentures to that company for the benefit of this particular industry; I am sorry to say that the Government of Bihar and the other creditor I have referred to are likely to lose the greater part of the money they have advanced.

Now, as, the Honourable Mr. McWatters has told us, if the provincial contributions are reduced or done away with, as they are bound to be in course of time, there will be more money at the disposal of the provinces, and then Honourable Members like Seth Govind Das and others who take such a keen interest—and rightly so—in this question could press their own Provincial Governments to help their industries as much as possible. If the provinces are relieved of the financial contributions, they certainly will have more money at their disposal; and if, God willing, the Central Government's revenues largely increase, it will be possible also to reduce taxation, which, if done, will enable even the Central Government to help national industries in the manner that Mr. McWatters has pointed out. The Statutory Commission will, it is hoped, soon be coming to this country and we shall not be losing much time if we delay the further consideration of this question till then, unless, as I have said, Seth Govind Das is able to bring forward a fresh Resolution for helping any particular national industry or industries—I say it will be better to wait until the Commission arrives for the reason that the Commission must consider the apportionment of the revenues between the Central Government and the Provincial Governments, and at that time the Commission might be informed of the views held by this Council as a result of the debate we are having to-day and which, if done, let us hope the Statutory Commission will devise ways and means whereby the object my Honourable friend has in mind will be well served and the industrial interests of the country advanced.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to support the spirit underlying the Resolution. It is a matter of gratification to us Punjabis to find that in our province an Industrial Board has been appointed and in a very short time it will be able to function. The question of finance, as the Honourable Mr. McWatters has himself realised, is a point on which consideration is needed. I beg to suggest that a Central Industrial Board be formed under the Government of India, which should be able to assist Provincial Boards wherever they exist. To expect each province to scrutinise some business venture will be to multiply expense on those particular ventures. What I beg to suggest is that in the Central Industrial Board questions of industrial development be considered and mature schemes should be put before the public and the public could then learn that they could start on certain industries which would be of profit to them. What we find now is that owing to the want of complete information, certain industries are started and then later on experience shows that the scheme was not well thought out and the result is disaster. In certain undertakings technical experts cannot be easily had and for want of that technical expert certain business firms fail when their first industrial expert resigns or dies. Therefore, Sir, although I do not want that a certain definite sum like Rs. 50 lakhs should

be allotted, I would leave that to the discretion of Government. Let them decide what amount they could easily spare for this purpose and that amount ought to go to assist the Central Industrial Board which should be an advisory body of all Indian Provincial Industrial Boards. One of its duties will be to scrutinise the various possible successful concerns or ventures which can be floated in each province and then put before the public full information and *pro forma* balance sheets to enable them to float such concerns. I quite agree with Sir Maneckji Dadabhoy that foreign capital ought not to be discouraged. In my opinion foreign capital has assisted India a great deal and has developed a number of industries which would not otherwise have been developed. My idea, therefore, is that we ought to work hand in hand with Europeans and learn those industries which India at present does not possess. I find, Sir, that certain industries which were started during the War in various provinces and which were then patronised by the Governments have now come to grief owing to the Government patronage being taken away. I will mention a few industries to illustrate my point. Some of the industries in the Punjab like surgical instruments, galvanised tubs and buckets and such like small industries which thrived very well during the war are now in difficulties. If there is a Central Board, the Provincial Board will be able to place before it the facts and the Central Board will exercise its influence with the Government of India to come to their assistance in some reasonable manner.

With these words, Sir, I support the principle of the Resolution though not the amount which the Honourable Member recommends. The Central Board will also be able to consider what industries ought to be subsidised and the amount of subsidies which ought to be recommended.

THE HONOURABLE SIR MANMOHANDAS RAMJI (Bombay: Non-Muhammadan): Sir, I am glad that the Honourable Mr. McWatters has raised two important points in connection with this Resolution. One is about the constitutional question—whether the Central Government can do this kind of work; and in support of that argument he said that the Mover of the Resolution had failed to point out the nature of the industries that he wanted to support. That is so, Sir, the Mover has not done it; but perhaps at a later stage he might do so.

I may point out to my friend some industries which are purely in the nature of central subjects. Take the ship-building industry. Is it not a central subject? Take the dyeing industry. Is it not a central subject? Take the chemical industries. Is it not a central subject? You can find out a dozen industries which could be very well taken up as a central subject requiring the full attention of Government. Another question that the Honourable Member raised was that this was a provincial subject. It is a provincial subject for minor industries. Nobody wants small industries to be developed by the Central Government. The position of Provincial Governments is well known. In the case of Bombay recently a Committee was appointed to go into the question of development of industries and the Industries Department. After the first sitting of that Committee, the terms of reference were changed and it was pointed out to the Committee that on account of financial stringencies the scope of the Committee was curtailed and the only function that remained for the Committee was to fix the salary and the qualification of the Director of Industries. Although the Presidency of Bombay is spending about two lakhs of rupees

[Sir Manmohandas Ramji.]

per annum that all goes towards the upkeep of the officer and office of that Department and nothing more. That is the position of the Bombay Government. Now about foreign capital. My Honourable friend Sir Maneckji Dadabhoy has rightly pointed out to this Council that we must have the help of foreign capital because money is so dear in this country. If foreigners can find it easy to realise about 6 per cent. and be satisfied with that return, naturally they must look to India to invest their capital. It is difficult to find in India capital at 6 or 7 per cent., and that is the root cause why capital does not come out of hordes. Therefore, we should encourage foreign capital as much as we can and side by side try to develop our industries with our capital. At one time this country was independent of any other foreign country for its domestic requirements. What is the position to-day? The position, as I found it to my bitter experience during war time, is that if the war had continued three years longer, it would have been difficult to get out coats sewn by a worthless needle. The country could not produce a needle or a pin. The Government of India in those days were very keen to help industries, and since the war everything is neglected and things have to find their own way. It is one of the duties of Government to see that the country is rendered independent of any other foreign countries for its domestic needs, which Government will also find it to its advantage one of these days. With these remarks I support the Resolution.

THE HONOURABLE SETH GOVIND DAS: In reply to the debate I have very few observations to make as my task has been much lightened by my Honourable friend Sir Manmohandas Ramji. The Honourable Mr. McWatters in opposing the Resolution raised two important issues, one constitutional and the other financial. As regards the constitutional point he himself has admitted that though the Industries Department is a provincial department, yet in exceptional cases the Government of India can interfere. As regards the activities of Provincial Governments in this respect I said in my speech when I moved my Resolution that these departments in the provinces are in a moribund condition. The Honourable Mr. McWatters pointed out the examples of three provinces which have done something in this respect.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces : Nominated Official): The United Provinces have also done something. I think Mr. McWatters mentioned the United Provinces.

THE HONOURABLE SETH GOVIND DAS: According to my Honourable friend Pandit Shyam Bihari Misra, the United Provinces have also done something. Out of nine provinces only four have done something and that is very little. As regards Madras, I have heard from my Honourable friend Mr. Ramadas Pantulu that though an Act has been passed yet very little action has been taken. I made it very clear that I did not want that provinces should have nothing to do with this department. What I want is the close co-operation of the Central Government and the Provincial Governments in this respect. My Honourable friend Sir Phiroze Sethna has pointed out that I have not mentioned any national industries in which the Government can invest this amount of 50 lakhs. It is a matter of detail and, if the Government accepts the principle, it can very well be done. It has been said not once, not twice but times without number, that India has vast natural

resources. These resources have not been utilised. There are provinces in which there are considerable resources and they cannot get as satisfactory results by working alone as they can if they work in co-operation with the Government of India. I am sure, Sir, if the Government of India accepts that India has vast resources, they can find out such national industries in the country in which they can invest a small sum of 50 lakhs of rupees.

Then as regards the financial aspect of the question, it is an old, old pretext of Government. This financial bogey is always brought before us whenever any useful proposition is brought forward before the Council by the representatives of the people. If we want to reduce taxation, the financial bogey is put before us. If we want national development, the financial bogey is put before us; in fact whenever we, the non-official Members, ask for funds for constructive work of any kind, the bogey of want of funds is put before us. May I ask the Honourable Mr. McWatters how can Government afford 40 crores of rupees for military expenditure? May I ask him how can the Government of India spend lakhs and crores in Reverse Councils? Then, Sir, when the Government of India are spending so much and are investing so much, I think they can easily invest this small sum. It is in fact no expenditure; it is in fact an investment. The Government of India have invested crores and crores on Railways borrowed from foreign countries, and I think they can very well afford to invest this small sum for the development of industries.

Then, Sir, the Honourable Mr. McWatters placed a big list before the House regarding the functions of the Government of India. One more function will not overload the Government, I am sure. The Provincial Governments are already interested in this matter, and if the Central Government also give a little help, it will not be a big thing for them.

Then, Sir, my Honourable friend Mr. Ram Saran Das pointed out that he does not agree with me regarding the sum of 50 lakhs. I am not very particular about the 50 lakhs. I only want that the principle be accepted by the Government; the amount may be more or it may be less. It may be 2 crores or 1 crore or 25 lakhs, or any amount which the Government think fit. As far as I think, Sir, this sum of 50 lakhs is a very small sum. It should have been crores, but even when such a reasonable amount of 50 lakhs is opposed, I do not think Government would be prepared to accept a bigger amount.

Then, Sir, my Honourable friend Sir Phiroze Sethna pointed out that, as the Statutory Commission will be coming out shortly, we should wait till then and bring this point before them. If the Government of India accept the principle of my proposition, and if they bring the point before the Statutory Commission, I think it will certainly carry far greater weight. Therefore, Sir, for all these reasons, I cannot see my way to withdraw my Resolution and I commend it to the acceptance of the House.

**THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :** On a point of information, Sir, may I ask the Honourable Member in charge how the Central Board of Agriculture is constituted when Agriculture is a provincial subject?

**THE HONOURABLE THE PRESIDENT :** The Honourable Member is not rising to a point of personal explanation.

**THE HONOURABLE MR. A. C. McWATTERS:** Sir, I have a very few words to say in reply. I should like to assure the Honourable the Mover of the Resolution that if I have not been able to accept the Resolution on behalf of Government, it is not because I am not fully impressed, as he is, with the importance of industrial development. It is solely because the method which he has suggested to assist that development is not, in my opinion, at the present moment, at any rate, a practical one, because we have not only a constitution with its various complications, but because we have financial obligations in front of us which, in my opinion, have first got to be liquidated before we can consider lump sum grants of this kind in the Central Budget.

There are one or two points in the Honourable the Mover's speech to which I should like to refer very briefly. He said that I had said that only three provinces were assisting the development of the industries of the country. What I said was that in three provinces State Aid to Industries Acts had been passed. That is the particular method of assisting industries which has been adopted in three provinces, and I went on to point out that in several other provinces, instancing the United Provinces, the same result had been attained without any Act at all by Boards of Loan Commissioners. I was not in any way suggesting that the other provinces had done nothing.

Then the Honourable Sir Manmohandas Ramji called attention to the position in Bombay. There, I think, the point he made about the procedure of the Committee specially appointed by the Government of Bombay really reinforces my point, that effective action was not possible simply because the province was unable to spare the funds, and, therefore, the right policy, in my opinion, is to put the provinces in funds to fulfil what is their primary function.

There was one point in the Honourable the Mover's speech which I think I can hardly pass over, and that is his remarks about the military budget. When I gave a list of the various functions of the Central Government in connection with industries, I think perhaps I ought to have included national defence and the protection of person and property. There is no function of the Central Government more important and more essential for industrial development than that, and it is therefore essential that in the Central budget fairly large sums should be provided for the army in the interests of industrial development.

One question was addressed to me about the constitution of the Central Agricultural Board. I have no direct knowledge of the constitution of that Board, but I quite agree with what has been said by several speakers that it is in the spirit of the constitution in certain circumstances to declare particular industries as of national importance. I made that point quite clear in my speech that particular industries may, in special circumstances, be treated as Central subjects.

Before concluding, I should like to say that I am sorry I am not able to accept this Resolution. Like the Honourable Mr. Ram Saran Das I am in sympathy with the spirit of it, and I think the Honourable Mr. Ram Saran Das made a very good point when he raised the question of central

co-ordination, co-ordination of information and so on. I should be the last to say that that problem has yet been satisfactorily solved. It is a point which we will keep in mind, and as more and more funds become available to the Central Government, the question of co-ordination, which is an important one, will not be lost sight of:

THE HONOURABLE THE PRESIDENT: The question is—

“That the following Resolution be adopted:

‘This Council recommends to the Governor General in Council to allot a sum of fifty lakhs per annum for the coming ten years in the annual budgets for the development of new industries in India under the direct supervision and control of the Government of India.’”

The Council divided:

AYES—16.

Desika Chari, The Honourable Mr. P. C.

Govind Das, The Honourable Seth.

Khaparde, The Honourable Mr. G. S.

Manmohandas Ramji, The Honourable Sir.

Mehr Shah, The Honourable Nawab Sahibzada Saiyad Mohamad.

Mukherjee, The Honourable Srijut Lokenath.

Oberoi, The Honourable Sardar Shivdev Singh.

Padshah Sahib Bahadur, the Honourable Saiyed Mahomed.

Ram Saran Das, The Honourable Rai Bahadur Lala.

Ramadas Pantulu, The Honourable Mr. V.

Rama Rau, The Honourable Rao Sahib Dr. U.

Rampal Singh, The Honourable Raja Sir.

Ray Chaudhury, The Honourable Mr. Kumar Sankar.

Sett, The Honourable Rai Bahadur Nalininath.

Sinha, The Honourable Mr. Anugraha Narayan.

Umar Hayat Khan, The Honourable Colonel Nawab Sir.

NOES—26.

Akbar Khan, The Honourable Major Nawab Mahomed.

Akram Hussain Bahadur, The Honourable Prince A. M. M.

Alay Nabi, The Honourable Saiyid.

Bell, The Honourable Sir John.

Berthoud, The Honourable Mr. E. H.

Brayne, The Honourable Mr. A. F. L.

Charanjit Singh, The Honourable Sardar.

Commander-in-Chief, His Excellency The.

Corbett, The Honourable Sir Geoffrey.

Dadabhoy, The Honourable Sir Maneckji.

Das, The Honourable Mr. S. R.

Froom, The Honourable Sir Arthur.

Habibullah, The Honourable Khan Bahadur Sir Muhammad, Sahib Bahadur.

The motion was negatived.

Haig, The Honourable Mr. H. G.

Hooton, The Honourable Major-General Alfred.

McWatters, The Honourable Mr. A. C.

Misra, The Honourable Pandit Shyam Bihari.

Muhammad Buzlullah, The Honourable Khan Bahadur.

Natesan, The Honourable Mr. G. A.

Sethna, The Honourable Sir Puroze.

Stow, The Honourable Mr. A. M.

Suhrawardy, The Honourable Mr. M.

Sawn, The Honourable Mr. J. A. L.

Tek Chand, The Honourable Diwan.

Thompson, The Honourable Sir John Perronet.

Tudor-Owen, The Honourable Mr. W. C.

## RESOLUTION *RE* GRIEVANCES OF RAILWAY EMPLOYEES.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU (Madras: Non-Muhammadan): I beg to move the following Resolution which stands in my name :—

“ This Council recommends to the Governor General in Council to appoint a Committee of three members consisting of the Honourable the Government Member for Commerce and Railways as Chairman and two other members, one from the Legislative Assembly and the other from the Council of State, elected from among the elected members of those respective bodies, to enquire into the grievances of the railway employees throughout the railway system in India, both State-owned and Company-managed, and suggest ways and means for the amelioration of their lot.”

Sir, this is an old sore—this question of the grievances of railway employees—which has been left uncared for and neglected for a number of years, and if I am raking it up to-day, it is because I find that the sore is of a cancerous origin and is fast spreading and eating into the very vitals of the Railway Administrations in this country. The Legislative Assembly from 1925 onwards had tried its level best to get this wound healed up but had failed in its efforts. The Government, with their characteristic pertinacity, refused to yield, interpellations, Resolutions and censure motions notwithstanding! Sir Charles Innes, in one of his replies, stated that it was dangerous to appoint an Enquiry Committee, that the railway employees numbering about 7½ lakhs all told, were an inflammable stuff, easily irritable and even the slight disappointment might end in danger. But he has failed to recognize that a discontented staff is a greater danger and an impartial enquiry may soothe their hearts and allay the unrest. Due to the world-war and the after-effects of the war, there has been an all-round increase in the wages of employees throughout India, either working under Government or working in mercantile firms, but in Railway Administrations alone, we have that order reversed, and wages, especially of the subordinate employees, considerably reduced. The Lee Commission gave the European officers employed, both in State and Company-managed Railways, all the concessions admissible to the Superior Services under the Government, but the increased emoluments, which the Government themselves have granted to their own subordinate services, have not been given to those in railway employ. Why? Because the controlling agencies that are responsible are unwilling to part with a pie more, but, on the other hand, are taking undue advantage of the law of supply and demand and want to squeeze out as much as possible from the sweat of their ill-paid, half-starved staff.

The Report of the Railway Board on Indian Railways in 1925-26 affords a curious study and betrays a lack of uniformity, want of system and huge waste in the working expenses. Taking the East Indian Railway as the model of sound railway administration in this country to-day, we find the Bengal Nagpur Railway, a Company-managed Railway, working in the same province and very nearly of equal mileage, comparatively unsound financially. While the East Indian Railway has earned a fabulous gain of Rs. 2,84,14,000 (2 crores 84 lakhs and fourteen thousand rupees), the Bengal Nagpur Railway suffered a loss of Rs. 46,60,000 during 1925-26. The East Indian Railway, it must be remembered, charges the cheapest fares in India, 2½ pias by mail and 2 pias a mile by ordinary trains for distances over 300 miles. Evidently the prevalent

discontent among the staff of the Bengal Nagpur Railway is the reason for the heavy loss in this railway. The cost of hauling a passenger one mile in this line is about Rs. 2.71, the highest for any Railway. It spends on its Agent's office 0.36 per cent. of the total earnings, the highest for any Railway (equalled only by the East Indian Railway which might justify this expenditure on account of its increased earnings) and 1.03 per cent. on its Audit Department against 0.92 per cent. spent by the East Indian Railway. On the Traffic Department it spends less—a department which earns, not spends, i.e., only 34.4 per cent. Every one of those items of expenditure can be curtailed and the accrued profits utilized to pay better wages to the lower subordinates and to reduce the fares. Coming to the South Indian systems, the Madras and Southern Mahratta Railway earned a net profit of Rs. 81,85,000, while the South Indian Railway earned Rs. 1,13,12,000 in 1925-26, though the mileage of the Madras and Southern Mahratta Railway is 2,996, while that of the South Indian Railway is only 1,876. Still, the South Indian Railway spends much less on its Traffic Department. It does not however seem to tend to economy where big interests are concerned. For, in 1925-26, the South Indian Railway spent Rs. 14,25,000 more on the maintenance of structural works, Rs. 10,27,000 more on the maintenance of carriage and waggon stock, Rs. 2,43,000 more on the supply of locomotive power, but only Rs. 11,000 more on the Traffic Department than in 1924-25.

THE HONOURABLE THE PRESIDENT: Order, order. I hope the Honourable Member will speak of the grievances of the railway employees. He seems to be talking about the grievances of the tax-payer all the time, or of the public.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: I am only pointing out the exorbitant demands made by the Railway Administration.

THE HONOURABLE THE PRESIDENT: The Honourable Member is decidedly labouring the point.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: To come to the point, Sir. On the Agent's Office, the South Indian Railway spends 0.37 per cent. of its total earnings, a percentage equal to that of the East Indian Railway, a broad gauge railway whose mileage is nearly double and whose profit is over two crores. Under the head of general administration, the South Indian Railway spends much more than the East Indian Railway. While money is thus lavishly spent on the superior staff of those departments, the South Indian Railway pays only Rs. 20-8-0 per mensem as the minimum wage for the traffic staff, and tells the men who cry for a living wage that it is not a business proposition to pay more when an adequate supply is available at a less cost. A contented staff is the greatest asset to any business concern, and a true business man must aim at securing this in the first instance. The Government and the heads of Railway Administrations will, by their apathy and stubbornness, only be driving discontent deeper underground. Not is this all. Low wages will lead to demoralization. The staff will be tempted to take bribes, wink at every offence for a paltry gain for themselves and mercilessly prey on the public. Not only will the Railway Companies be put to loss but the public will also suffer. There will be laxity in administration. The staff should therefore be placed above temptation, and if the railway concerns wish to thrive, they should



[Dr. U. Rama Rau.]

pay their staff not hand-to-mouth wages but handsome wages, commensurate with the risk and responsibilities involved. The safety of the lives of the travelling public depends on the contentment of the subordinate staff of the Railways, working in the Loco, Traffic, Engineering and other allied departments. Besides low wages, these employees seem to suffer under various other disabilities. There is racial discrimination, there is the housing problem, there is the question of affording facilities for the education of the children of the staff, there is the question of appeals against arbitrary fines, suspensions, dismissals, forfeiture of provident fund, etc.,—all these will have to be enquired into and solved to the satisfaction of both the employers and the employees. The Railway Unions are still in embryo and are powerless to act against the dictatorial authority of their own superiors, whose judgment they often have to question and criticize. It is quite necessary, therefore, that an impartial enquiry should be instituted forthwith and this could best be done by the small Committee I have proposed. By so doing, the Government will not only satisfy themselves but will also satisfy the Central Legislature and through them the public. The employees will have also some satisfaction of having had their grievances heard by the highest authority in the land. This will considerably allay their feeling and conduce to good-will and harmony between the employers and the employees. With these words, I commend this Resolution for your kind acceptance.

THE HONOURABLE SIR GEORGE RAINY (Member for Commerce and Railways): Mr. President, I think I ought to begin by thanking the Honourable Mover of this Resolution for the very high compliment he has paid me. He has assumed that I should be capable, with the assistance of one Member of this Honourable House and one Member of the Legislative Assembly, to conduct an inquiry into all the grievances of railway employees in addition to such other duties as my office may impose upon me. I am afraid, however, Sir, that I do not feel able to accept that compliment. I fear that I should prove totally inadequate to discharge the very grave responsibilities which the Honourable Mover desires to thrust upon me. After all, Members of this House and Members of the Legislative Assembly are busy people, and, as I have already hinted, I have a certain amount of work to do myself. Therefore, this Committee, if appointed, could not be a whole-time committee, but possibly a half-time or a quarter-time Committee. Though it seems to me that we might commence our inquiry if we were appointed, I doubt very much whether we should ever be able to finish it, for, I observe, the terms of reference in the Resolution are almost entirely unrestricted. What is proposed is that this Committee should inquire into the grievances of the railway employees throughout the railway systems of India, whether State-managed or Company-managed. That would mean that any matter which any class of railway employees considered to be a grievance would *prima facie* be a matter calling for investigation by the Committee, and the mere task of weeding out their questions which were really trivial, and were not matters calling for any intervention by the Legislature, would of itself be a very prolonged and arduous task. But even if the Honourable Mover had recommended the appointment of a whole-time committee and even if that Committee had included, as I think it must include, if it was to do any good at all, a number of railway experts, even then, a general

inquiry into the grievances of the employees of Indian Railways would be a task which would mean, an enquiry occupying from 18 months to 2 years before the Committee submitted its report. These are my preliminary objections to the Resolution which has been moved. There are, however, more important objections. The Honourable Mover, I think I gathered from his speech, considered that the most important grievances which called for an inquiry were grievances as regards pay and emoluments, and I think he suggested that on the Railways of India, the increases of wages and pay, which had taken place after the war were, speaking generally, less than in other industries or in other branches of Government service. That is a position which I cannot possibly admit to be a correct statement of the facts. A very large increase in the emoluments of railway servants on all Railways in India was made in the year 1919-20, and the whole question of the adequacy of the increase that had been given was investigated in 1921 by an officer of the Finance Department who was specially asked to satisfy himself whether these increases were adequate. I should like to quote—it has already been quoted by Sir Charles Innes in another place in dealing with the same subject—but I should like to quote here from this officer's report.

"I did not commence the investigation as the result of which this note has been written with the object of trying to prove that railway servants have received more than others. My endeavour was to get at the truth. It has surprised me more perhaps than it will surprise some of those who read this note to find how much really has been done in recent years—at of course an enormous cost, present and prospective, to the State—to make the lives of railway servants easier and their prospects brighter. I am absolutely convinced though there still may be isolated cases in which further concessions for this purpose may be admissible, that as much has been done for these men as a body as they can in reason demand."

That was written in 1921, and as I said, the increases of pay were given in the year 1919-20. That was a time of very high prices in India. Prices were, I think, something like 30 per cent. higher than they are at present. Therefore, the railway employees were fortunate in this respect, that the revision of their pay took place at a time when the cost of living was high; and if the officer whom I have quoted was correct in the opinion he expressed in 1921 that the increase of pay was fully adequate, and that it was probably better than in any other Government department, if that was true in 1921, at a time when prices were high, it is still more true in 1927 when prices are very much less.

I will not follow the Honourable Mover into that part of his speech in which he apparently dealt with what he regarded as the extravagant or wasteful management of particular railways, because that is a matter which is not directly relevant to the subject of the Resolution. He said, however, that low wages on the Railways were thoroughly bad things and that if Government did not take adequate notice of complaints, they were making the mistake of driving discontent underground with possibly disastrous consequences. I think every Member of this House will agree that, if wages are unduly low and if Government and the Railway Administrations refused to listen to complaints about them, then unquestionably that would be a very serious matter. But the point I should like to emphasise is this: that the onus of proof lies heavily upon those who allege that, generally speaking, the railway scales of wages are too low. It is for them to show that this is a fact before they have made out a *prima facie* case for any inquiry at all. I can only say that the

[Sir George Rainy.]

Honourable Mover in his speech was not able to satisfy me that there was any such *prima facie* case for inquiry. It is obvious indeed that however much one might wish that it were possible to better the lot of the ordinary railway employé, there are two points which have always to be kept in view by those who are responsible for settling the scale of pay and other similar matters. First, they have to consider the relation which the rate of wages on the railway bears to the rate of wages in industries generally, and second, they have to remember also the fact that these wages ultimately come, not out of any mysterious pocket of the Government of India, but out of the pocket of the ordinary tax-payer and the ordinary railway traveller and the ordinary merchant and consumer. In the long run it is they who have to pay, and therefore what I may perhaps call the sentimental interest is not all on one side. It is not merely that in considering the case of railway workers we have to consider that many of them are not well off; we have to consider also the other point that to render their lot easier and happier, in the long run the people who will have to pay for that, or the great bulk of them, are no richer and no better off than the men themselves.

The Honourable Mover referred briefly to several other matters in which he considered that the railway employés had grievances. But I do not think it would serve any useful purpose if I were to attempt at present to go into details of that kind. I should like, however, before sitting down to refer to another aspect of the case. The Honourable Mover referred to the existence of unrest and to the occurrence of strikes on more than one railway. Now, unfortunately, in this world we must expect to find in any large commercial or industrial organisation such as the Railways, that the employers and the employed do not always see eye to eye, and that frequently the employés will consider that they have grievances, whether those grievances could be established to the satisfaction of an impartial tribunal or not. Undoubtedly I think in recent years in India we have had more industrial troubles of this kind on the Railways than we used to have in former years. But I do not think for a moment it would be a true explanation to suggest that railway men are worse off than they used to be. It is rather to be attributed, first, to the unrest and excitement occasioned by the war and the years after the war, and, in the second place, to the general spread in India of new ideas about the place of labour in the scheme of things, and to anxiety on the part of the labouring classes to promote movements to try and better their conditions. Now, if I were considering what step could most usefully be taken in order to deal with this new state of affairs, which is growing up in India—it is not restricted to the Railways but is common to all the big organised industries—I think almost the very last thing I would do would be to appoint an all-India Committee with unrestricted terms of reference. What must be the almost inevitable result? The inevitable result will be that on every railway in India everything that has ever been considered a grievance for the last five or six years would be brought forward; the relations between the Railway Administrations and their workmen would at once become embittered and the maintenance of harmonious relations between the Railway Administrations and their workmen would become almost impossible. This state of affairs must continue for another two or three years at least. Now, a very large number of the alleged grievances are purely local matters, and you could not, as regards such matters, lay down uniform rules; I doubt whether you could.

very well lay down general rules even for a single railway system—far less over all the Railways in India. The fair rate of wages would not be the same in the South of India as in the Punjab; the housing question again is really a purely local question, and you have got to consider each particular case on its own merits. Now, the way I should look forward to seeing differences of opinion between employers and employed settled in this matter would be through the gradual development of conciliation machinery by which the employés and the Railway Administrations would be brought closer together.

A beginning has already been made in this matter. For some time past, two or three years I think, the Great Indian Peninsula Railway has had Staff Councils, as they call them, formed in 1924 and they have been operating very satisfactorily. They were instituted with a view to dealing with matters relating to the railway staff, and giving an opportunity for the staff to meet the officers and to discuss with their officers any matters affecting their welfare generally. There is a railway council which meets at the headquarters office, and there are also divisional and station committees. The information that the Railway Board has is that a large number of questions affecting the administration of railways and the welfare of the railway staff have been freely discussed at these meetings with useful results. The Bombay, Baroda and Central India Railway has had similar councils on the traffic side for some time, and has recently decided to institute similar councils for the locomotive staff. Turning to the Eastern Bengal Railway, I find they have got different names for their organisation, but the object is very much the same. They have what they call welfare committees and amongst the declared functions of these committees are these—to utilise to the full the practical knowledge and experience of the staff, to secure to the staff a greater share in the responsibility for the determination of the conditions under which their work is carried on, to provide means for ventilating grievances affecting a class as a whole with a view both to the prevention of differences and to their better adjustment when they appear, and so on. Well, we have made a beginning with the machinery for bringing the employers and the employed together and getting them to understand each other and trying to arrive at arrangements which will be mutually satisfactory. I have no doubt we have a lot to learn, but I do hope for really satisfactory results from the gradual development of such conciliation machinery in this country, and I should deprecate in the strongest possible way the appointment of a roving committee with unrestricted terms of reference which, as far as I can see, could not, within any reasonable time, arrive at recommendations likely to improve matters and which meanwhile would remove all chances of harmonious relations between the Railways and their men, and would produce, in my view, the most unfortunate results. For these reasons Mr. President, the Government of India are unable to accept this Resolution.

**THE HONOURABLE LALA RAM SARAN DAS (Punjab : Non-Muhammadan) :** I rise to support the underlying spirit of the Resolution. I cannot refrain from expressing my thanks to the Railway authorities and to the Railway Board and to the Honourable the Commerce Member for the consideration which they have shown in past years to the increment of the wages of the railway employees. I myself felt very interested in this matter and was watching the development of this question from time to time. What I find is that as far

[Lala Ram Saran Das.]

as the officials and the upper subordinate class of the railway employees are concerned they have been given adequate increments, but it is the lowest rungs of the staff and the menials who have not received proper consideration as regards the increment of their salaries. I was discussing this matter with a railway official and he told me that as far as the basis of salaries for the lowest rungs of the staff were concerned they were not adequate on economic grounds. I gave him the figures for the maintenance of one's self and family, and it was found that the lowest salaries were not adequate. He told me that it is simply a question of supply and demand and as long as Railways can get clerks or menials on low pay why should Railways pay higher salaries? It might hold good in a business concern, where it is purely a question of private enterprise, but in a concern where the safety of the travelling public is concerned we have to make the employees contented and to make them put their heart into their work. In case the Honourable Member for Commerce says that the question of the poor employees will receive his further consideration, I will ask my Honourable friend to withdraw his Resolution.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab : Sikh) : Whilst I feel sympathetic to the Honourable Mover of this Resolution my sympathies go towards the Honourable Member for Commerce, who has opposed this Resolution. I sympathise with the spirit of the Resolution, for the reason that I know for certain that the railway employees have genuine complaints and an inquiry is needed to hear those complaints and to satisfy them. As regards the proposal of having a committee to inquire into those complaints, of course I could agree with the expression of opinion which has been made by the Honourable Member for Commerce that it will entail two or three years' hard labour, and also a lot of expense to the public exchequer. My experience of the recommendations of these committees, I am sad to admit here, is not very pleasant. Committees are appointed by Councils. They work for two years, spend public money in travelling and in other expenses and when the recommendations of the Committees come to take some concrete form, they are shelved or thrown away. As regards the complaint of the railway employees, as the Resolution stands, the complaints of pointsmen getting Rs. 10 to Rs. 12 up to the highest official will have to be heard and considered. It will certainly entail very great labour and perhaps will not bring the desired fruit. As regards the genuineness of the complaints, I would like to express before this Honourable House that there are complaints not only of the menial staff, but among the upper grades also there are very reasonable complaints. I find that there is a difference of pay grades between different station masters, drivers and between engineers of the same covenanted service. There is also difference so far as their leave allowances are concerned. Of course, I know, and every member of the railway staff knows, that there is an officer above him before whom he can bring his complaints. But, Sir, it is not very often that complaints are dealt with in the sense in which they ought to be dealt with by superior officers. I think it is absolutely necessary that the grievances of the railway staff should be taken into consideration and remedied, and if any means could be devised so as to enable them to put forward their grievances before the administration, and the administration will be judicious enough to

consider those grievances without any difference as to class or creed, such means should be explored and acted upon.

Sir, I heard with very great interest from the Honourable Sir George Rainy that in certain Railways there are associations of employees. I think this is one of the means by which the employees of railways can bring forward their complaints, because they can often meet their superior officers and have an exchange of ideas and make their point of view properly understood by their immediate superiors and thus get their grievances remedied. If such associations are formed and encouraged on all the Railways under the Railway Board, it will go a long way to meet the purpose which the Honourable the Mover has in view, and it would not be necessary in that case perhaps to have the inquiry proposed by him. But, Sir, I still hold the opinion that, as the grievances are genuine, some means should be devised to go into those grievances and to remedy them as far as possible.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : Sir, if the Honourable Member for Commerce thinks that the committee that I propose is impracticable and it is not for them to do the work, I do not mind if he appoints a full-timed committee to go about and make inquiries. But even if that is not feasible, if he promises that he will send round an Inspector to inquire and find out whether the railway employees have any grievances or not, my object will be served. Further, Sir, I was extremely glad to hear that on some Railways there are Conciliation Boards. If the Railway Board would appoint Conciliation Boards on all the different Railways, and the grievances of the railway employees would receive their attention, I should be glad to withdraw the Resolution.

THE HONOURABLE SIR GEORGE RAINY : If the Honourable Member desires to withdraw his Resolution, the Government of India have clearly no objection.

THE HONOURABLE THE PRESIDENT : The Honourable Member seems to me to impose many conditions. He can only ask the leave of the Council to withdraw his Resolution unreservedly.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : If the Honourable Member for Commerce thinks that he can introduce these Conciliation Boards on all the Railways in India, I will withdraw my Resolution.

THE HONOURABLE SIR GEORGE RAINY : I am afraid, Sir, I should not be prepared to agree to a conditional withdrawal of the Resolution by the Honourable Mover which implies that the Government of India have to adopt a certain course of action.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : If the Honourable the Commerce Member cannot give me this undertaking, I shall have to press my Resolution.

THE HONOURABLE THE PRESIDENT : In the circumstances, I must put the Resolution to the Council.

[The President.]

The question is :—

“That the following Resolution be adopted —

‘This Council recommends to the Governor General in Council to appoint a Committee of three members consisting of the Honourable the Government Member for Commerce and Railways as Chairman and two other members, one from the Legislative Assembly and the other from the Council of State elected from among the elected members of those respective bodies, to inquire into the grievances of the Railway employees throughout the railway systems in India, both State-owned and Company-managed, and suggest ways and means for the amelioration of their lot.’”

The motion was negatived.

### CRIMINAL LAW REPEALING AND AMENDING BILL.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadan) : Sir, I beg to move that the Bill to repeal and amend certain provisions of the Indian Criminal Law Amendment Act, 1908, and the Code of Criminal Procedure, 1898, as passed by the Legislative Assembly, be taken into consideration.

At this late stage of the day's proceedings, I do not think I will be justified in making a very long speech in support of this motion and make the Honourable Members sit late into the night. I shall have another opportunity of replying to the debate at the end of it, and therefore I shall make my introductory speech as brief as I can. This Act known as the Criminal Law Amendment Act, XIV of 1908, as most Honourable Members of the Council know, was passed under very exceptional circumstances, just on the eve of an instalment of reforms to this country. The 11th of December, the date on which this Act received the assent of His Excellency the Governor General, is a somewhat memorable date in the political history of India. It was just at that time that in England a very serious attempt was being made to conciliate people in this country by giving them some amount of responsibility in the administration of this country. The 11th of December happens to be the day on which our distinguished countryman, the late lamented Gokhale, made a very epoch-making speech in England while this repressive Act was being enacted in the Imperial Legislative Council. But when I look back to the history of legislation in this country, I find that the Government's diplomacy has got the three R's as every school boy has got his three R's. The three R's of the British bureaucracy are *Reforms*, *Recrudescence of disorder* and *Repressive Laws*. These are three R's. I find there is a regular cycle of these three R's whenever I go into the history of any reforms in this country. Therefore, in 1908, when reforms were being introduced this repressive measure also was introduced to deal with likely recrudescence of disorders. It was under those exceptional circumstances that this unfortunate Act XIV of 1908 was passed by the old Imperial Legislative Council. When it was passed, responsible members of the Legislative Council expressed the hope that it would not be a permanent feature of the Indian Statute-book, and that an early opportunity would be taken to repeal the Act as soon as conditions in India improved. My friend Sir Maneckji Dadabhoy, who happened to be in the Legislative Council in those days, then made a very sympathetic speech,

and he expressed his disapproval of the principles of the Bill, but supported it for the reasons that the interests of peace and order of the country then required it, but he qualified his support with a very earnest desire that it should be repealed as soon as possible. The Honourable the Maharaja of Darbhanga, who is now a Member of this Council, was also in the Imperial Legislative Council at the time, and he also opposed the principle of this Bill. He gave a very qualified support adding that it should be repealed as soon as possible.

There was another very distinguished Indian in that Council then, the late Sir Rash Behary Ghose. If I may be permitted to say so, he was one of the greatest jurists, if not the very greatest jurist, that India produced. He had two objections to the passing of this Bill. One was on a ground of expediency. He said that just on the eve of the reforms, within a fortnight of the reforms being announced in India, to pass a repressive measure of this kind was not expedient on the part of the Government. The second was with reference to the merits of the Bill. All that I can possibly now say against the Act was said on that occasion by the late lamented Sir Rash Behary Ghose.

This Act, when it was passed, was a very long one, consisting of 18 sections, but by the year 1922 we find that a big slice of it was amputated. By Act V of 1922, the first 14 sections which formed the first part were repealed, and now what remains of the Act is Part II consisting of only 4 sections, that is, sections 15, 16, 17 and 18. This portion relates to what are called unlawful associations. Certain power is given by this second part of the Act, which comprises four sections, that is, sections 15 to 18, to the Governor in Council in the first instance with reference to Bengal, and later on to various other Local Governments with reference to other provinces, to declare certain associations as being unlawful associations. Following on such declaration, the consequences are that any person who is found to be a member of such association is liable to punishment of a less serious character, namely, six months' imprisonment, and a person who is found to manage or promote an association of that character is made liable to more serious punishment extending to three years' imprisonment. That is the substance of the second part of the Act. Section 15 says :

"In this part 'association' means any combination or body of persons, whether the same be known by any distinctive name or not; and

(2) 'unlawful association' means an association—

- (a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or
- (b) which has been declared to be unlawful by the Local Government under the powers hereby conferred."

So, you see there are two parts of section 15 which define association. First of all, association is defined, and secondly, unlawful associations are classed under two categories. It is very necessary that the House should follow this definition, because I am asking for the repeal of only one portion of section 15 and not both the portions of that section. Section 15 (2) (a) says 'that an unlawful association means an association which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts.' There is no objection to that



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standing under this Bill. But the second portion, section 15 (2) (b) runs as follows :

“ An unlawful association means an association which has been declared to be unlawful by the Local Government under the powers hereby conferred.”

This is the objectionable portion which is sought to be repealed by this Bill.

The Bill deals with three distinct subjects. The first subject that it deals with is the repeal of section 15 (2) (b), that is, the power given to the Local Government to declare any association as an unlawful association. Normally, a measure which seeks to repeal such an arbitrary provision does not require much argument in its support. Just imagine what it means? All that the Local Government has got to say is that a particular association is an unlawful association. Then every member of it becomes liable to punishment under the law. If the Local Government issues a notification that a particular association is unlawful and then puts up any member thereof before a Magistrate for an offence under section 17, the only power which the Magistrate has got to exercise is to find out whether he is a member of that association or not and then to punish him. The real point at issue ought to be whether the association is unlawful or not. The Magistrate would have no power to inquire into the question whether the association is unlawful or not, because the notification of the Governor General in Council or the Local Government, as the case may be, will be conclusive proof that the association is unlawful. Therefore, all that the Magistrate has got to do is to act as the henchman of Government and merely sentence the man put up before him by the Government. That is a most undignified position for any judicial tribunal in this country to take up, and I do not think it requires much argument to show that it is a most uncivilised law, for which any Government, any civilised Government, any decent Government, should take credit. You give no opportunity to the association to prove that it is not an unlawful association. You do not call upon the members to show that they are not members of an unlawful association, and you do not observe any form of law or any legal process whereby any member of an association, or the association as a whole, or any responsible officer of the association, will have the slightest opportunity of showing cause against the notification of Government. It is merely the executive whim which is exercised, I dare say, on certain principles. My Honourable friends on the opposite side will no doubt try to convince this House that the executive never acts arbitrarily, and that it acts better than a judiciary. But the Act itself casts no legal obligation upon the executive to take any preliminary steps to ascertain whether an association is unlawful, and it gives not the ghost of a chance to a person arraigned before a criminal court to prove that the association to which he belongs is not an unlawful association. That is the kind of law which is sought to be maintained on the Statute-book after a lapse of nearly 19 years.

This House and the other House made repeated attempts to get rid of this Act. The credit for initiating agitation, constitutional agitation for the repeal of this and other repressive laws, on the Statute-book, mainly pertains to this House. On the very first day on which the Council of State met to transact normal business, after it was constituted in the year 1921, a Resolution was tabled by the Right Honourable V. S. Srinivasa Sastri recommending to the

Governor General in Council the repeal of the repressive laws and he included in the schedule to that Resolution many Acts of which this was one. The Government accepted the principle of the Resolution and appointed a Committee. That Committee recommended the repeal of five of the repressive laws which were scheduled by Mr. Srinivasa Sastri, and then, with regard to this, the Committee said that, though at that particular moment they would not recommend the repeal of Part II of the Criminal Law Amendment Act, yet they expressed the hope that the Government of India would take an early opportunity to repeal the second part of that Act as well. But that hope was not realised.

THE HONOURABLE SIR MANECKJI DADABHOY : Will you read the passage in which the Repressive Laws Committee have stated that ?

THE HONOURABLE MR. V. RAMADAS PANTULU : I will read it later on. My Honourable friend wants references. Because I do not wish to keep this House beyond 5 o'clock, I do not propose to read portions of the Report.

THE HONOURABLE SIR MANECKJI DADABHOY : But I cannot allow you to make statements which do not exist.

THE HONOURABLE MR. V. RAMADAS PANTULU : When I make statements on the floor of this House, I take full responsibility for the statements that I make. But I am not here standing to convince every one of my Honourable friends that the statements I make are borne out by references. It is as much a part of the duty of my Honourable friend to read that Report as it is mine. If he comes here unprepared, I cannot help him. I do not propose to waste the time of the House on him.

THE HONOURABLE SIR MANECKJI DADABHOY : I have read it several times.

THE HONOURABLE MR. V. RAMADAS PANTULU : Read it once more. That Committee, Sir, has expressed the hope that the Criminal Law Amendment Act will also be repealed very soon. But nothing has been done since then. My Honourable friend Sir Hari Singh Gour brought a Bill, in the other House, some time in 1924 for the repeal of Part II of the Criminal Law Amendment Act. That Bill was passed by the Legislative Assembly by a very large majority of 71 against 30 or 40. It was brought to this House some time in February, 1924, by a very distinguished Member of this House, my friend Mr. Karandikar, but this House rejected the motion to take the Bill into consideration as passed by the Legislative Assembly, and there was an end to the matter. But during the debate in the other place on Sir Hari Singh Gour's Bill, Sir Chimanlal Setalvad and Sir P. S. Sivaswamy Aiyar, both very distinguished jurists, and Members who occupied the positions of Law Members of two Provincial Executives, asked the Government whether they would consider certain proposals to make Part II of the Criminal Law Amendment Act less dangerous than it is and more reasonable than it is. They wanted Government at least to concede to the association or any member of it who is condemned under that Act, by an executive notification, the right of appeal to the High Court in which the question whether the association which has been condemned is an unlawful association or not may be agitated. They said they would not have pressed for the repeal of the entire Part II. Government did not give any

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undertaking at the time, but said they would consider it on its own merits if that question was separately raised, but they would not consent to the repeal of Part II. Sir Hari Singh Gour, apparently inspired by the hope that the Government may accede to the very reasonable proposals made by Sir Chimanlal Setalvad and Sir P. S. Sivaswamy Aiyar with regard to the said right of appeal to the High Court as to the unlawfulness or otherwise of the association, brought this Bill again in the Legislative Assembly, and again, Sir, this Bill was passed by a substantial majority in the other House, and it now comes to this House as passed by the Legislative Assembly. Therefore, I would ask the Government to accept this portion of the Bill which relates to the repeal of clause 2 (b) which seeks to give the power to the Governor General in Council to declare certain associations unlawful merely by executive order. I know that there is section 16 of this Act which lays down certain principles on which the Government's opinion is to be based.

"If the Governor General in Council or the Local Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Governor General in Council, or the Local Government, as the case may be, may, by notification in the official Gazette, declare such association to be unlawful."

But what are these principles? The principles are merely "if he is of opinion that any association interferes or has for its object interference with the administration of law and order or that it constitutes a danger to the public peace." It is bound to be merely an opinion based upon police reports. The Governor General in Council or the Local Government does not go about making inquiries. It bases all its notifications upon reports received from the police or interested sources, and it merely acts on them. I do not object to that, because it is the only way of doing things. But the objection lies in the fact that it acts on one-sided testimony and one-sided reports and gives no opportunity to the person who is accused of being a member of an unlawful assembly to repudiate that statement. It is acting against all civilised principles of Criminal law. Therein lies the objection. Therefore, I do not think many more words are necessary on my part to convince this House of the reasonable nature of this amendment.

The second part of the Bill relates to investing the High Court with jurisdiction to hear appeals under section 17. The new section which is sought to be substituted for the old section 16 runs:

"Any person convicted under the provisions of section 17 may appeal to the High Court on the ground that the association in respect of which he is convicted was not an unlawful association."

May I ask in all humility why this provision should be objected to? Is it because the executive has no confidence in its own High Courts, or because it thinks that an opportunity to prove that an association of that sort was not unlawful will materially interfere with the administration of justice or disturb the peace and order in the country? The initial power is there. The mischief can be arrested. Government can declare an association unlawful and then put the man under arrest and take all legal proceedings. All that we want is that the person so arrested ought to be given an opportunity to prove his innocence by a very simple and well-known method of an appeal to the highest judiciary in the country. May I ask in all humility what there is in this provision to

upset the even tenour of the administration of this country ? I really cannot see anything. I have read very carefully the debate in the other House and I was unable to find a single sentence in any of the speeches made either by the official spokesman or by those who supported him as to the reason why the High Court should not be invested with such a power. There ought to be some power to see whether an act of the executive in depriving the liberty of an individual is or is not correct.

Two reasons were given for maintaining this Act on the Statute-book. One is the necessity for maintaining it in view of the frequent recurrence of disorders in this country. But the provision will be there. The provision is not sought to be repealed. All that we ask for is that when the provision is put into force, and when a person is punished, he should have the right of appeal. The other argument is one of prejudice. It is said over and over again : " Can you quote a single instance in which this provision has been misused or abused by the bureaucracy ? " It was pointedly put to the Honourable members. That is not a valid test, because, a person convicted under the section for being a member of an unlawful assembly never has a chance of proving that the assembly was not unlawful and that he was not a member of an unlawful assembly ? After that right is taken away, how can we give you the proof ? You say : " Demonstrate that the convictions under this Act were wrong or that the action taken by the Government in declaring an association unlawful was wrong. " But we are precluded from testing that point in any court of law. How are we then to prove our innocence ? It is asking us to do an impossibility. But if you ask whether public opinion is against the Government of India doing such things, there is ample, abundant, proof of the fact that the Act was misused. This and the allied Act, the Seditious Meetings Act, were put into force on a large number of occasions and were grossly abused. Under this Act and the other Act meetings of Provincial Congress Committees—private meetings held in private houses—were held to be unlawful assemblies or associations, and the volunteer organisations of the Congress were held to be unlawful associations. If I am not mistaken, it was under these notifications by which associations were declared unlawful, that men of assured position like Lala Lajpat Rai, Pandit Motilal Nehru and the late Mr. C. R. Das were convicted. The Congress volunteer organisations and the Congress Committees were declared unlawful. They became unlawful associations and their members were sent to jail, some for six months and some for longer periods. If the bureaucracy contend that this is not misuse, it will not get one man in India, who loves his country, to agree with them. They may be supremely complacent in their own wisdom, in their own sense of justice, but there will not be one *Indian*, who is worth his name, who will say that an association of which the late Mr. C. R. Das and Pandit Motilal Nehru were members were unlawful associations or approve of an Act under which they were sent to jail by mere executive declaration. I do not think any arguments are necessary to convince any patriot, any man who loves his country, that it is a most grossly unjust and grossly uncivilised piece of legislation which ought not to be allowed to stand on the Statute-book for a minute.

An appeal to the High Court is a remedy which is given to persons who are convicted of much more serious offences of a political character. After all this is not so serious an offence as some other serious offences like waging war against

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the King or sedition and offences of that character, in which the persons convicted can prove their innocence in a court of law. This is not so serious as those offences, and I really do not see where the objection comes in to giving a right of appeal to the High Court. With regard to cases where the High Court is merely asked to sentence a man and is not given any opportunity to go into the case and the evidence, the Calcutta and Madras High Courts have expressed their regret that they should be called on to sentence a man without being able to discharge their legitimate function of sifting the evidence and evidently felt that it was inconsistent with their dignity and prestige as the highest Courts of law. In these circumstances, I hope my Honourable friends on the opposite side will not oppose this small recommendation.

The third part of the Bill, Sir, relates to the amendment of section 491 of the Criminal Procedure Code. Under the Criminal Procedure Code the right of getting a person who is in unlawful custody produced before the High Court and releasing him, is given to High Courts. The right is the well-known one of writ-of *habeas corpus*. That right is given in a qualified form to the High Courts. The section which deals with it is section 491 and it runs thus :

“ Any High Court whenever it deems fit can direct that a person within the limits of its appellate criminal jurisdiction may be brought up before the High Court to be dealt with according to law, and that a person illegally or improperly detained in public or private custody within such limits be set at liberty.”

But this section contains a very vicious proviso which practically takes away the right of the British subject to the liberty vouchsafed to him by the first part of the section. If a man is tried in an ordinary criminal court, the High Court has jurisdiction to deal with him, either to set him at liberty or to order a new trial or to quash a conviction, and so on. But when a person is spirited away and put in jail under one of the extraordinary repressive laws, which the executive has armed itself with, the power of the High Court to deal with such a person is taken away expressly by sub-section (3) of section 491 :

“ Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation, 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the State Prisoners Act, 1850, or the State Prisoners Act, 1858.”

What this Bill purports to do is to exclude British subjects from the scope of the third sub-section. By adding the words nothing in this section applies to persons “ other than British subjects ” liberty is given to High Courts to deal with British subjects confined under some of these repressive and extraordinary laws. The object of confining the protection to British subjects is this : it is to meet a possible objection by the other side that supposing there are some people from the frontier or outside India or people who owe no allegiance to the King and who may be outlaws, how is the Government to deal with them ? To meet such cases, the protection that is sought to be extended by means of the writ of *habeas corpus* is confined by this Bill to British subjects. With regard to non-British subjects you may deal with them as you please and the High Court will not be in a position to interfere. Therefore, Sir, it is a very modest request that is made.

I find, Sir, that in another place serious objection was taken to tacking on this provision to a Bill to amend a part of the Criminal Law Amendment Act. I really do not see any objection. The things are not so unconnected with each

other ; but even if they are, the Government of India have set the very bad example of similarly dealing with many matters in a single Bill. They bring in Acts of a repealing and amending character which deal with many heterogeneous things. Of course if left to myself, I would, as far as possible, like not to imitate the bad habits of the Government of India in legislation, if I can possibly avoid it. But I am afraid I cannot avoid imitating the bad habits of the Government of India for this reason that it is almost impossible to get non-official measures through the Council of State or the Legislative Assembly ; it takes an unconscionably long time—two, three and even four years. The official business and other work takes up almost the whole time of the Legislature and no non-official is able to get his Bills through ; and if it is not possible to get a single Bill through in a reasonable period, how much more difficult is it to get two such Bills through ? Therefore, expediency and the way in which Government manages its own business really compel us to imitate its bad example. And if I plead guilty of bad drafting it is for a good reason and I do not think, therefore, that objection ought to stand. The real connection is this when you are securing the liberty of the subject and trying to show that nobody should be confined by means of repressive enactments without a trial, and if you do have to confine him at all, you should give him at least a right of appeal to the High Court, that is the proper connection in which you ought to say that other people deprived of liberty under the repressive law should also be protected by writ of *habeas corpus* ; there should not only be a right of appeal to the High Court, but the High Court should also have its lawful function of getting the person before itself and releasing him if unlawfully detained. Supposing an association is declared unlawful or a man is arrested and locked without trial, the High Court must have power to say : “ Bring the man here ; we will see whether he is wrongfully confined or not ; and if he is illegally confined he will be set free.” In my short experience I can tell you that with regard to the Moplah rebellion there were a number of cases in which the special tribunals set up by the Government convicted a number of Moplahs for offences of a serious character and they were sentenced to long terms of imprisonment, but when the High Court was moved to issue a writ of *habeas corpus* and to get them released because they were wrongly convicted, the High Court first of all hesitated whether they had jurisdiction or not ; and when the whole matter was argued out, the High Court were convinced that they had jurisdiction and they issued writs of *habeas corpus* and a number of persons were released on the simple ground that they were illegally convicted. If my recollection is right, not less than a score of persons were so brought up under writ of *habeas corpus* to the High Court and they were all released on the ground that they were illegally convicted. A reference to the Indian Law Reports, Madras Series, will convince any one, if he has the patience to go through them, of the truth of what I have said. Therefore, it is a very valuable right for which we are fighting. To take away the right of the High Court in such cases will be a misuse of the power. Therefore, either in form or on its merits I do not see that the amendment in regard to British subjects being protected under section 3 is open to any objection. I hope that it will not be objected to on the ground that it is unconnected with the first part of the Bill.

It has been said that the Bill is not happily worded, that the drafting is not good and that there are certain objections to the language of the Bill. I will

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only say one word with regard to that matter. I am really surprised that the Government should raise such a difficulty with regard to non-official Bills. Standing here, I feel that I have as much right to the services of the official draftsman of the Government of India and the huge machinery the Government of India have set up for legislation in this country as the Honourable Mr. Das or the Honourable Mr. Haig. I would remind my friends on the opposite side that the Department is maintained at the public expense and the money does not come from England, but it is the tax-payer's money in this country that is paid to them and it is paid to see that legislation is properly drafted. Therefore if there is any defect in the drafting it is up to the Government draftsman to come to the rescue of non-officials as much as to the rescue of the officials. He is not their servant—he is the servant of the public. Therefore, if you plead that our Bills are defective, we throw the entire blame on you. The non-officials here are not in possession of a library or of the legal assistance or the technical expert advice which is available to every Government Member in charge of a Bill.

THE HONOURABLE MR. S. R. DAS (Law Member): Perhaps my Honourable friend will allow me to say that we in our Department have never refused to help a non-official in the preparation of his Bill.

THE HONOURABLE MR. V. RAMADAS PANTULU : I am very thankful to the Honourable the Law Member. But I have read the debates and at least on six occasions I noticed the plea that the non-official Bills were unacceptable on account of bad drafting.

THE HONOURABLE MR. S. R. DAS : Because they have not been subjected to our examination.

THE HONOURABLE MR. V. RAMADAS PANTULU : Does the Honourable member mean to say that every time we introduce a Bill, we should go on bended knees before the department or Mr. Wright and say ' For Heaven's sake, amend this.'

THE HONOURABLE MR. S. R. DAS : There have been many cases in which non-official members have submitted their Bills to our department and asked us to redraft them, and we have always complied with that request. But once a Bill has been introduced without consulting us, we cannot be held responsible for the drafting, nor can it be said that we have refused to assist the Honourable Member.

THE HONOURABLE MR. V. RAMADAS PANTULU : In the case of the amendment of criminal laws the previous sanction of the Government has got to be taken before a Bill is introduced. After it is sanctioned the objection of bad drafting does not come with any grace from the official draftsman. The proper way is to ask for its amendment and not rejections. I am however thankful to my Honourable friend. Therefore if there are any drafting defects we can with the assistance of the official draftsman put them right. I hope, therefore, no technical objections will be raised and the Government will deal with the subject on its merits. I have a great deal more to say. But I would not detain the House one minute longer than 5. I have got my right of reply, on other points which I have not dealt with now. Sir, with

these words I move that the Bill as passed by the Legislative Assembly, be taken into consideration.

THE HONOURABLE SIR MANECKJI DADABHOY : (Central Provinces : Nominated Non-Official :) This Bill does not come for the first time before this Council. With the formation and the election of members of the Legislative Assembly and the Council of State every time this Bill has been in the past brought up for discussion in some shape or other. This Bill has come for discussion in this very Council on two occasions previously. This Bill, I certainly admit, comes to us in a very much altered form. Originally the Bills which Dr. Gour introduced were for the total repeal of Part II of the Criminal Law Amendment Act. This Bill does not proceed on those lines. It does not ask for the total repeal of Part II, but it makes certain changes of a very vital character in the framework of the Bill. These changes and modifications at first sight look very simple and innocuous but they are really not so. They are full of serious potentialities, as I shall presently show, it would be dangerous for this Council to accept this Bill even in a modified form. My Honourable friend just about the close of his remarks referred to certain imperfections in drafting. It is true that the Bill contemplates an unusual procedure—there being no means or any connecting principle or justification for combining two distinct amendments in two different Acts. I am not going to take that as my plank for opposing my Honourable friend though I admit that in my long legislative experience it is for the first time that I have come across a Bill in which a modification both of the substantive law as well as the adjective law has been asked for. I know of Bills in which modifications of various substantive laws as embodied in different Acts have been asked for, but this is the first occasion on which a motion is made for the modification both of the substantive as well as the adjective law. My difficulties in this matter are serious. Still I am not going to make a good deal of harvest out of it, though it would prevent a proper, impartial and unbiased discussion of the whole subject. It might have the effect of clouding the judgments of my Honourable Colleagues because not being lawyers they may not be able to discern the connection between the two amendments that have been sought for.

Now, Sir, this Bill makes three definite changes. The first is a very substantial change. It seeks to repeal the following important provision in Part II of the Criminal Law Amendment Act, that is clause (b), section 15. To refresh the memory of my Honourable colleagues I will read clause (b). It states —

“ Unlawful association means an association which has been declared to be unlawful by the Local Government under the powers hereinafter conferred.”

The second change which this Bill seeks to make is to provide under Part II for a right of appeal by a separate section, section 16 (a), and the third change which is also of a very vital character, although my Honourable friend called it a very modest change, seeks to protect British subjects to whom the Act will not apply. It will apply only to frontier tribes and lawless marauders and Bolsheviks who are supposed to be carrying on their nefarious propaganda in this country. The object is to leave intact the power of the executive so far as non-British subjects are concerned and to extend the protection of the *habeas corpus* provision of the Criminal Procedure Code to British subjects.



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I will now deal with each of these three points and show how dangerous the whole position would be if these amendments are accepted by this Council. Now, my friend started with the assertion that the Repressive Laws Committee recommended that Part II of this Act should be repealed, and when I confronted my Honourable friend with a request to read that statement, he retorted that I had not read the report of the Repressive Laws Committee. I challenge him again to show me a single statement in that report where any unconditional recommendation for the repeal of Part II was ever made by that Committee, and I go further and, in support of my contention, quote the authority of no less a person than Sir Alexander Muddiman, until lately the Home Member of the Government of India.

Sir Alexander said :

"The facts are that the Committee definitely recommended that the Criminal Law Amendment Act should not be repealed; and it is no use wasting time on endeavouring to extract a pledge by Government out of that report."

This is quite to the contrary. But what does my friend say? He says the Committee definitely recommended.....

THE HONOURABLE MR. V. RAMADAS PANTULU: Read the words "at present".

THE HONOURABLE SIR MANECKJI DADABHOY: I have read the paragraph. But show me your paragraph?

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma: General): Paragraph 25, page 11.

THE HONOURABLE SIR MANECKJI DADABHOY: The Committee definitely recommended that the Criminal Law Amendment Act should not be repealed, and it is no use trying to extract a pledge or a promise from Government out of that Report. Nothing could be more definite than that. If my friend and the Honourable Member behind me depend on a certain sentence in the Report and wish to distort that statement and put on it their own interpretation, they are quite welcome to do so.

Now, the first point is the repeal of clause (b) of clause 2 of section 15 of that Act. Now sub-clause (a) of that clause says,—it is necessary to refer to it because it throws some light, it defines an unlawful association,—it says :

"which aids or encourages persons to commit acts of violence or intimidation or the members of which actually commit such acts."

The present Bill does not touch this clause (a), and curiously enough, it asks for the repeal of sub-clause (b). The result of this will be that the Local Government will declare that a certain body is an unlawful association. This will be only a pure pious expression of the Local Government, and no further action could be taken. The whole Bill would be emasculated, it would be ineffective for any purpose whatsoever; it would be ineffective for the purpose for which it was designed. The only effect, in my opinion, would be to render wholly ineffective a section in the Act which the author of the Bill does not propose to touch. I can quite understand a proposal to repeal the whole Act or Part II of it; there would be some sense in a motion like that. But if the recommendation in the motion is now carried out, the result will be that the law will exist in name,

but will be wholly ineffective, and will frustrate the very purpose for which that law was created. The power is given to declare certain associations to be unlawful, but further action on the part of the Government will not be practicable. Now, Sir, I am not discussing at this stage the merits of Part II of the Act. I have only pointed out the position in which the Government will find itself by the acceptance of the proposal put forward by the Honourable the Mover,—that an emasculated, mutilated, senseless law should exist on the Statute-book.

Now, the next point which my friend has argued is in respect of the power of appeal; that is, section 16 of this Act, which states that any person convicted under the provisions of section 17 may appeal to the High Court on the ground that the association in respect of which he was convicted was not an unlawful association. How innocent does this provision look? My friend says. What is this, a mere right of appeal, why object to it? But a little reflection will show that if you pass this section, it would render the whole Act absolutely nugatory and useless. Now, what was the object of this Act? The object of this Act was to give Government power and authority to declare certain associations unlawful. That was the original aim. The Government asked for this power on the distinct plea that in certain cases in many parts of India dangerous associations existed; they had a sufficient amount of evidence to prove the existence of those associations; they had men who had given information in connection with it; but Government were in a serious difficulty in prosecuting these dangerous people and dragging them to a court of law on account of the difficulty of adducing evidence. This Act was purposely passed with an avowed object, it was passed with a definite object in view. You now try to give a right of appeal, and you want the Magistrate who will hear the case to call upon Government to produce that evidence and that information which the Government all throughout wanted to keep to themselves and had asked for this special legislation. As I have explained to the Council, the basis of this legislation is different. You ask now that the judgment, or shall I say the findings, of the Governor General in Council, or in case where these powers have been delegated under the Devolution Act, the Governor in Council of every province who has received information on this should be subject to the revisional powers of a Magistrate? Are they to submit the information to an authority entirely below themselves and ask such authority to revise the findings of the Governor General in Council or the Governor in Council, as the case may be? A moment's reflection will show that this is not such an innocent provision as my friend over there thinks it is. It goes to the root of the whole legislation of this Bill. It frustrates the object of Government; it kills the important part of the Bill, and it is impossible either for Government or for any other thinking and judicious Member of the Council to accede to the proposal. Why not have the honesty to say: "We don't want to have the whole Bill", and repeal the whole Act? This is a very ingenious proposal, and by the ingenuity of the author, it brings in a clause which goes to the root of the whole Act and renders the law entirely nugatory.

Now, the third provision which my friend called a very modest provision, is the introduction of four simple words in clause 4, namely "other than British subjects" in the Code of Criminal Procedure which provides for the operation of the *habeas corpus*. . What is the argument on the other side? The argument

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is this. This provision is—let me just as a preliminary tell you, because in the former debates which took place the Government took the objection that among other things this provision, this weapon in their armoury, was necessary to check Bolsheviks, lawless marauders and foreign tribes which come to India, spend money, excite people and encourage anarchical propaganda. In order to meet that objection, this suggestion has been provided by the author of the Bill. Sir, what is the meaning of this? The meaning of this is that if a British subject is a member of an unlawful association or of a revolutionary body, or is propagating the spread of sedition and anarchy—if a British subject with external fund commits these acts, you must not touch him. If the Government takes any action under the Act against a British subject an application may be made forthwith to the High Court under the *habeas corpus* and his body may be produced. But if the foreign tribes and lawless people come to this country and supply funds to the British people, the foreign party may be touched immediately and arrested, but not the British subject who was the direct instrument of crime. This is the distinction which this section wishes to make. The section is, in plain language, that if our British subjects receive actual help and financial assistance and take part in this propaganda, you must leave them alone but only touch the foreigners.....

THE HONOURABLE MR. V. RAMADAS PANTULU: You do not leave them alone, but you leave it to the High Court to deal with them.

THE HONOURABLE SIR MANECKJI DADABHOY: It is a most absurd contention. It is an unwarrantable discrimination. My Honourable friends have forgotten the modern history of riots and revolutions in this country, and in this connection I will quote to you one simple case—the case of the Cawnpore conspiracy. It must be in the recollection of every Member of this House. The High Court in that case—mind you, the High Court, and not the executive Government—came to the conclusion that the accused who were British subjects received money and funds and were instigated by these foreign bodies and Bolsheviks.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: They have been punished by the High Court.

THE HONOURABLE MR. V. RAMADAS PANTULU: Nobody objects.

THE HONOURABLE MR. P. C. DESIKA CHARI: It was not a case under the Criminal Law Amendment Act.

THE HONOURABLE SIR MANECKJI DADABHOY: But it was proved in that case that these people were helped by foreigners and they were convicted. The Honourable Mr. Crerar in the course of his speech in the other place in this connection also referred to this in very appropriate terms:

“October 1923. Then followed the Cawnpore conspiracy case. It was judicially proved in the course of the Cawnpore conspiracy case that there existed an organisation largely supported by inspiration and funds from abroad, for the promotion of a communist revolutionary movement in India. I am not asking the House to believe that on the assertion of any executive authority, but on the deliberate judgment of two Judges of the High Court. That was in the beginning of 1924. Later, disturbances unfortunately occurred in Burma and once more a prompt and early resort—there were very few prosecutions but a certain number of declarations—to the second part of the Criminal Law Amendment Act was again of the greatest value to the Local Government.”

So, you will see how dangerous it will be to insert these words in the Code of Criminal Procedure and thereby give immunity to a class of people in this country who live, who make it a profession to live, on the money received from foreign countries and from Bolsheviks for the purpose of creating anarchy in this country. Is this Council prepared to accept this suggestion, this modification? I say both parties, the perpetrator and the abettor, should be liable and that immunity of any kind should not be given. We must protect the country not only against lawless marauders and foreign fanatics, but also protect it against our own men who will join these people and create and help to create anarchy and lawlessness in this country.

Sir, I have pointed out that the provisions of this section are not so innocuous as my Honourable friend, Mr. Ramadas Pantulu, desires this Council to believe. My Honourable friend has referred to the part played by two or three of our distinguished citizens in connection with this Bill when it was first enacted. He has referred to the statements made by them in the Council that though they gave their consent to this measure they told the Government of India at that time that this legislation should be only for a stated period, that it should only be of a temporary character and should be repealed when the circumstances did not require it.

My Honourable friend has omitted to mention that my humble self was also among the Members who were in the Council then and who took some part in the debate. I was the first to point out that this Act should only be kept for a stated period and removed no sooner the circumstances demanded it. Since 1908 when the Bill was passed, various riots, revolutions, and communal outbursts of a very serious character have come into existence. In 1923, when I was speaking in this Council, I made it clear in a very long speech that the allegation that the abnormal times have ceased to exist is not correct. I went through the whole history of crime in India in that speech of mine, which is reported at.....

THE HONOURABLE MR. V. RAMADAS PANTULU : On a point of order, Sir. Can an Honourable Member quote himself in support of his statements?

THE HONOURABLE SIR MANECKJI DADABHOY : What was it that my Honourable friend said? I did not hear him.

THE HONOURABLE THE PRESIDENT : The Honourable Member may continue his speech.

THE HONOURABLE SIR MANECKJI DADABHOY : In the course of my speech I proved—I am not going to refer to the cases at this late hour and do not desire to inflict on the Council the reiteration of those cases, but if any Honourable Member desires to know the details he will see my speech reported at pages 252 to 256, fully reviewing the whole history of the crime and proving that the abnormal times are still continuing. I do not wish to take up the time of the House by going again into this matter, but I will only ask you not to lend any countenance to this Bill. The powers exercised under the Act are of a very important character. Though on two occasions in this Council and three or four occasions in the Assembly objections have been taken to this Act remaining on the Statute-book, no party, no Member either here or there, has pointed out a single instance in which Government have abused their powers under

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the Act. I have previously challenged my Honourable friends opposite to quote me a case in order to win me over to their side and show me when and where Government have abused their powers.

My friends have not been able to show it. Let me also tell you that this Act is not hastily or precipitately applied. It is not applied to the whole of India in the first instance. It applies only to certain provinces where there are revolutionary bodies endeavouring to thwart the administration of the country and to upset law and order. There is also a safeguard. A Provincial Government has to obtain the sanction of the Governor General before that Act can be put into operation. That is a very adequate safeguard. The Provincial Governments have got to prove the necessity for the application of that Act. It must also be admitted that since the passing of this Act there has been an increase in crime, and if there was ever a time or justification on account of the fanaticism prevailing among some of the illiterate, uneducated masses of the people who are in the hands of certain revolutionary bodies, it is this, and it is more than necessary that this Act should continue to remain on the Statute-book. I must also tell you that the Government do not ordinarily resort to this law. We have seen that in every province the Government first resorts to the ordinary law, and when it finds that the ordinary law is not capable of reaching these people, it is only then that it has recourse to this Act. If you bear in mind all these safeguards which the Government of India and the Provincial Governments adopt, it is perfectly clear that there is no case made out for the repeal or modification of Part II of this Act. Even in the course of the arguments that have been urged here and elsewhere, appeal is made only on the grounds of sentiment, a sentiment that Government have the power to declare associations illegal or unlawful without taking into confidence the other party or giving the other party an opportunity of contesting their conclusions. Is it possible, if such an opportunity was given to the other party, that they would help the Government? It is just for this reason that this sort of legislation is required. The original Act is a wholesome, salutary piece of legislation. It does not affect the ordinary liberty of men. It only affects the liberty of criminals. It only affects the liberty of people who want to break the law, and who want to join revolutionary and anarchical bodies. It only touches the liberty of that class of irresponsible and dangerous people. No citizen who is above board, who is not in any way connected with these associations has anything to fear from the existence of this Act. I ask my Honourable colleagues—we are designated as the elder statesmen—to reflect seriously on the consequences which might arise by our hasty acceptance of this Bill which my Honourable friend has moved. I feel confident that this Council will show the same sober and same judgment that it has demonstrated before.

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The Council then adjourned till Eleven of the Clock on Tuesday, the 6th September, 1927.





## COUNCIL OF STATE.

*Tuesday, 6th September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### QUESTIONS AND ANSWERS.

#### LIST OF BANKS, FIRMS, ETC., FROM WHOM THE IMPERIAL BANK OF INDIA MAY PURCHASE STERLING.

98. THE HONOURABLE SIR PHIROZE SETHNA : Will Government be pleased to place on the table a copy of the approved list of banks, firms, etc., from whom the Imperial Bank of India may purchase sterling ?

THE HONOURABLE MR. A. F. L. BRAYNE : The list referred to is intended for departmental use only, and the Government are not therefore prepared to place it on the table of the House.

#### PURCHASE OF PAINTS FOR STATE RAILWAYS THROUGH THE INDIAN STORES DEPARTMENT.

99. THE HONOURABLE SIR PHIROZE SETHNA : Will Government state :

- (a) if they can compel Government Railways to make their purchase of paints through the Indian Stores Department ; and
- (b) if goods purchased by the Railways direct can be inspected by the Controller of Inspection ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) If by Government Railways, the Honourable Member means State-managed, the answer is in the affirmative.

(b) Yes.

THE HONOURABLE SIR PHIROZE SETHNA : If the answer to part (a) is in the affirmative, will Government kindly see that all purchases of paints are made through the Indian Stores Department ?

THE HONOURABLE SIR GEOFFREY CORBETT : The policy of Government in regard to purchase of materials through the Indian Stores Department by the Railways was fully explained by Sir Charles Innes in his speech on the last Railway budget debate in the Assembly on the 24th February 1927. I would refer the Honourable Member to that.

#### APPLICATION OF THE INDIAN EMIGRATION ACT, 1922, TO PERSONS RECRUITED FOR SERVICE IN THE PORT OF ADEN.

100. THE HONOURABLE SIR MANMOHANDAS RAMJI : (a) Will Government be pleased to state whether they are considering the question of



applying the Indian Emigration Act, VII of 1922, to persons recruited for service in the port of Aden ?

(b) If the reply to the above question be in the affirmative, why do Government consider this to be necessary ?

(c) Are they considering the above question under instructions from His Majesty's Government ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :

(a) No. (b) and (c) Do not arise.

#### MILITARY BUILDINGS AT SATARA.

101. THE HONOURABLE SIR MANMOHANDAS RAMJI : Is it a fact that the military buildings at Satara are lying vacant ? Have Government considered the holding of a Training School at Satara ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : The answer to the first part of the question is in the affirmative. These buildings are likely to be required for military purposes in the near future.

#### EXPENDITURE ON THE REMOVAL OF THE SMALL ARMS SCHOOL FROM SATARA TO PACHMARHI.

102. THE HONOURABLE SIR MANMOHANDAS RAMJI : Will the Government be pleased to state :

(a) what was the cost to Government in removing the Small Arms School from Satara in the Deccan and accommodating it at Pachmarhi, Central Provinces, in the years 1925-26 and 1926-27 ; and

(b) is there any prospect of the military buildings lying vacant at Satara being utilised, in the near future, for any military purposes ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) The amount so far spent in providing accommodation at Pachmarhi as a result of the amalgamation of the two schools is about 2½ lakhs. I have not got figures of the actual cost of the move from Satara to Pachmarhi, but the measure as a whole was one of economy and results in a direct saving of about one lakh a year.

(b) Yes.

#### OVERCROWDING OF THIRD CLASS COMPARTMENTS ON RAILWAYS, ETC.

103. THE HONOURABLE SIR MANMOHANDAS RAMJI : (a) Has the attention of the Government been drawn to a passage appearing in the Indian Railway Magazine, Vol. III, No. 7, July 1927, at page 133, in Notes and Comments, under the heading "Death in Railway carriage" ?

(b) If so, what action has been taken to relieve the overcrowding in the third class compartments ?

(c) Do Government propose to equip the third class compartments with electric fans ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) Government have seen the article mentioned.

(b) It is impossible within the scope of an answer to detail all that Railways have been doing to relieve overcrowding in third class compartments. Particulars will be found in the Report by the Railway Board on Indian Railways, 1925-26, Volume I, under "Improvements and amenities for the travelling public." It may, however, be mentioned that since the year 1922-23 the total third class seating capacity available on Railways has been increased from 911,300 to 1,047,600.

(c) Not at present at any rate. Government consider that when money is available for improving the amenities for third class passengers, there are other directions in which it can be more profitably employed.

NUMBER OF APPOINTMENTS MADE BY THE PUBLIC SERVICE COMMISSION SINCE ITS CONSTITUTION.

104. THE HONOURABLE SAIYID ALAY NABI: Will the Government be pleased to state how many appointments have been made by the Public Service Commission since its constitution and to give the number of Hindus, Muhammadans, Sikhs, Anglo-Indians, Indian Christians and Europeans appointed in each branch of service?

THE HONOURABLE MR. H. G. HAIG: I think my Honourable friend is under some misapprehension as to the position. In the first place, the functions of the Public Service Commission only extend to making recommendations for appointments, and the actual appointments are made by Government. In the second place, the responsibility for preventing the preponderance of particular communities rests with the appointing authority and not with the Public Service Commission, who give preference to candidates of minority communities only when they have instructions to do so. I have however obtained from the Commission statements which give an analysis of the results of the various examinations held by them and of the nominations made by them, and I shall be glad to send the Honourable Member a copy of these statements if he so desires.

SELECTION OF CANDIDATES FOR THE INDIAN MEDICAL SERVICE.

105. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Will the Government be pleased to state:

- (a) the number of candidates who applied for the selection test recently held at Simla for recruitment to the Indian Medical Service;
- (b) the number selected; and
- (c) how many of the selected candidates possess British medical qualifications and how many hold degrees of Indian Universities?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: (a) 54 candidates were considered by the Board.

(b) 20 were selected.

(c) No candidate possessing only Indian qualifications was selected. Of the candidates selected, 8 possess purely British medical qualifications and 12 possess Indian medical qualifications in addition to professional qualifications obtained elsewhere.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : May I know the reasons, Sir, why not a single candidate holding the degree of an Indian University was chosen ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : I can only presume that the Selection Board selected the candidates whom they considered the best.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : May I know, Sir, whether it is a fact that candidates with a comparatively poor academic record in India, after a stay for a few months in England and getting a medical diploma to their credit there, have been selected in preference to brilliant Indian medical graduates holding even temporary commissions ?

THE HONOURABLE THE PRESIDENT : The Honourable Member's question is somewhat full of argument.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : May I know, Sir, whether it is a fact that candidates who held inferior qualifications of foreign countries have been chosen in preference to brilliant Indian candidates ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : I should like previous notice of that question.

#### SELECTION OF CANDIDATES POSSESSING BRITISH MEDICAL QUALIFICATIONS FOR THE INDIAN MEDICAL SERVICE.

106. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : (a) Is it a fact that the Secretary of State had issued instructions to the Selection Board to select only those candidates who have British medical qualifications ?

(b) Were the Government of India previously consulted by the Secretary of State in the matter of restriction in the choice of candidates ?

(c) If the answer to the above is in the affirmative, will the Government kindly state why the original announcement calling for candidates for selection test did not specifically make mention of this ban on Indian Medical degree-holders ?

(d) Will the Government kindly place all the correspondence, if any, that passed between Simla and Whitehall, on this subject, on the table of this House ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) and (b). No.

(c) and (d). Do not arise.

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THE HONOURABLE THE PRESIDENT : I have to invite the attention of Honourable Members to the fact that the list of business which has issued for to-morrow's meeting shows the motion of the Honourable Mr. Ramadas Pantulu for consideration of the Bill to repeal and amend certain provisions of the Indian Criminal Law Amendment Act, 1908, as coming after the Resolutions which have been ballotted for for to-morrow's meeting. That is not in accordance with the Standing Order, and Honourable Members will kindly note that the first business to be taken to-morrow after questions will be the Honourable Mr. Ramadas Pantulu's motion.

## AGREEMENT BETWEEN THE UNITED KINGDOM AND THE LATVIAN REPUBLIC.

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary) : Sir, I lay on the table the \*Agreement between the United Kingdom and the Latvian Republic relating to Tonnage Measurement Certificates, which affects India.

## INDIAN DIVORCE (SECOND AMENDMENT) BILL.

THE HONOURABLE MR. H. G. HAIG (Home Secretary) : Sir, I move that the Bill further to amend the Indian Divorce Act for a certain purpose be taken into consideration.

When introducing the Bill a few days ago I explained the very simple scope of it. At present under the Indian Christian Marriage Act a valid marriage can be contracted between a Christian and a non-Christian. But the Indian Divorce Act, which was passed three years before the Marriage Act, only contemplated that proceedings for divorce could be taken by a Christian. This anomaly was pointed out in the course of a debate in the Legislative Assembly in March 1926 by Sir Hari Singh Gour, and he then explained that it was more than a formal anomaly, and that actually in Burma it gave rise to difficulties and a certain sense of grievance. The Honourable the Home Member stated in the course of that debate that he would consult opinion. Local Governments were accordingly consulted and the great majority of opinion was in favour of making the proposed amendment. Particularly support came from Burma where the difficulty was felt more than in other places. There was some opposition from those who disapproved of divorce on principle and therefore did not wish to see any facilities for it increased. But, Sir, when once the principle of divorce is admitted, it seems only reasonable that the two parties to the marriage should be treated on exactly equal terms and that the non-Christian party should not be barred from a relief which is extended to a Christian.

Sir, I move that the Bill be taken into consideration.

The motion was agreed to.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill. \*

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. H. G. HAIG : Sir, I move that the Bill be passed.

The motion was adopted.

## ASSAM LABOUR AND EMIGRATION (AMENDMENT) BILL.

THE HONOURABLE MR. A. C. McWATTERS : (Industries and Labour Secretary) : Sir, I beg to move that the Bill further to amend the Assam Labour and Emigration Act, 1901, for certain purposes, be taken into consideration.

I explained at the introduction stage that this Bill is of a purely formal character. Its object is simply to regularise the collection of cesses for the

[Mr. A. C. McWatters.]

purposes of the Assam Labour Board. That Board came into existence in the year 1915 in consequence of an amending Act. It consists of a Government Chairman and of representatives of the various sections of the tea industry whose functions are to supervise the recruitment of labour for Assam. The only form in which labour is now recruited is by garden sardars, who are supervised by the Assam Labour Board. Difficulty has arisen solely from the fact that the clause which purports to allow the collection of these cesses, refers to the word 'labourer' and 'labourer' is not used in its ordinary English sense, but is specially defined in the Act as a person bound by a labour contract. As probably every Member of this house knows, these labour contracts were abolished years ago, so that, strictly speaking, there may be some doubt whether these cesses are now being legally collected. The object of this Bill is simply to remove that technical difficulty.

Sir, I move.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. C. McWATTERS: Sir, I move that the Bill be passed.

The motion was adopted.

### INDIAN BAR COUNCILS (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill to amend the Indian Bar Councils Act, 1926, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

Honourable Members will remember that when the Bar Councils Act was passed last year, there was a certain amount of controversy on the question of precedence between different branches of the legal profession, and the then Home Member, Sir Alexander Muddiman, gave an undertaking that opinion on that question should be invited and, if necessary, an amending Bill would be brought forward later on. The question was then circulated, and although there is a certain amount of lack of unanimity between the gentlemen who have submitted their views, on the whole the majority of the High Courts prefer that, subject to the preservation of rights existing at the time when the Bar Councils Act comes into force, seniority of preaudience should be regulated in accordance with the recommendations of the Indian Bar Committee's Report, and this Bill embodies that suggestion.

Sir, I move.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadian) : Sir, while I give my whole-hearted support to this motion, I shall only express my hope that the Government of India and the Local Governments will take prompt action to bring the Act into operation, because certain formalities have to be observed by the Government of India and some of the Local Governments, and I hope they will comply with them promptly. I may also express the general approval of members of the bar in India of this measure, though it is a partial one. The present amendment with regard to the fixing of seniority has also received general support from members of the bar.

THE HONOURABLE THE PRESIDENT : The question is :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

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### INDIAN MERCHANT SHIPPING (AMENDMENT) BILL.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : (Education, Health and Lands Member) : Sir, I move that the Bill further to amend the Indian Merchant Shipping Act, 1923, as passed by the Legislative Assembly, be taken into consideration.

In doing so, I think it is necessary that I should explain briefly the circumstances which have led up to this legislation. Some of the Honourable Members now in this House will remember that on the 12th of March, 1925, I made a motion for taking into consideration a Bill to amend the Indian Merchant Shipping Act, 1923, as passed by the Legislative Assembly, and for passing it into law. That Bill has since become law as Act XI of 1925. That measure was designed to obviate as far as possible the inconveniences and hardships which the pilgrims who proceeded to perform their Haj experienced on their return journey at Jeddah, largely by reason of the fact that after coming to Jeddah, a fairly good proportion of the pilgrims was stranded in that city owing to their inability to purchase return tickets, and the inevitable consequence was that either public funds or private charity had to go to their rescue for the purpose of repatriating them back to India. This problem had assumed such dimensions and was growing in such proportions from year to year that it became necessary for the Government of India to devise measures to obviate these inconveniences and hardships. It then seemed that the only solution of the problem lay in compelling every pilgrim, before he embarked, either to provide himself with a return ticket or to deposit beforehand a sum equivalent to the cost of his return voyage to India. When that Bill was under consideration in another place, both at the stage of the Select Committee and even earlier, Moslem opinion expressed itself rather emphatically to the effect that solution which was aimed at in the Bill could not be regarded as complete, in that there was a considerable amount of delay on the part of the shipping companies to sail their ships on the dates advertised beforehand, and that in consequence a large number of pilgrims were detained either at Bombay or Karachi or at Jeddah for a much longer time than their slender

[Sir Muhammad Habibullah.]

resources would permit, and that by the time they got on board either at Bombay or at Jeddah they had already exhausted a good proportion of their slender resources. A suggestion was therefore made that while an obligation was being cast on the shoulders of the pilgrims to purchase either return tickets or to deposit the necessary money to cover the return voyage, there should be a corresponding obligation cast on the shoulders of the shipping companies to see to it that the ships advertised to start on a particular day did so as a matter of fact and that they were not detained at the ports for any length of time. Government, Sir, after a full and exhaustive investigation into the reasonableness and reality of the grievances which were brought to notice were prepared to introduce a clause in the amending Bill of 1925 to that effect. But, Sir, it was held by the Honourable the President of the Legislative Assembly that such a provision was outside the scope of the Bill then under consideration. Therefore, that measure had to confine itself merely to the provision of an obligation which was imposed on the pilgrim and an undertaking had therefore to be given on the floor of that House by myself that Government would soon introduce legislation to carry that promise into effect. This, Sir, was on the 5th of March in another place. As I stated already, the motion came before this House on the 12th of March, and even here, my Honourable friend, Mr. Saiyid Raza Ali, who adorned this House at that time and who is now holding the exalted position of a member of the Public Service Commission, raised the same point and laid considerable stress on the urgency for making necessary provision in the Bill itself; but on my explaining to this House the real position and on giving them the same assurance as I did to the other House, that Bill was passed into law. That, Sir, is briefly the genesis of this measure and I think it is unnecessary for me to explain the matter any further.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 2 do stand part of the Bill."

THE HONOURABLE SIR PHIROZE SETHNA (Bombay: Non-Muhammadan): Sir, I beg to move the amendment which stands in my name, namely:

"That the following words be added at the end of the first proviso to sub-clause (1) of clause 209C, namely:

'or provided that the merchant or owner or agent shall satisfy the port officer or other competent Government authority at the port of embarkation that any detention after the advertised date of sailing is due to a reasonable cause.'"

Clause 209C penalises the master, owner or agent if the ship does not sail on the advertised date. Government, however, have foreseen certain contingencies and have, therefore, introduced the first proviso according to which, if the departure of the ship is delayed owing to any cause not arising from the act or default of the master, owner or agent, the shipping company will be exempted from the penalty which is laid down in the Bill. My amendment foresees some other contingencies. The contingencies Government have foreseen are such as inclemency of the weather on account of which

it might not be thought advisable to send out a boat on the date fixed or it might be due to some defect in machinery. The contingency I foresee is of another kind in which also I contend that the shipping company should be exempted from the intended penalty.

A ship is berthed for carrying pilgrims from India to Jeddah only after the shipping company gets to know the probable number of pilgrims it is likely to carry. This is ascertained from persons who are called brokers and through whom pilgrims buy their passages. Now, it may be that a shipping company is informed by such broker or brokers that there might be about 1,400 people going by a particular ship advertised to sail on a particular date. It may be that for reasons over which the pilgrims themselves have no control they are unable to reach the port of embarkation by that date; and suppose out of 1,400 people about 1,100 or 1,200 people arrive and the remainder have not arrived, say for example, owing to a railway accident or other reason; then it is in the interest of the pilgrims themselves, I hold, that the steamer should not go on the date advertised but sail a day or two later after the remaining pilgrims have arrived. Now, the inconvenience would be greatly felt towards the end of what is known as the Haj season. Supposing there is the last pilgrim ship going; it ought to arrive by a certain date in order to enable the pilgrims to perform the Haj in that year. If therefore the ship sails on the date advertised and leaves behind 100 or 200 pilgrims, it means that they will not only be stranded at the port of embarkation, but what is more from their point of view, they will not be able to perform the Haj until perhaps a period of at least another twelve months. That, I contend, would be a very great hardship on the pilgrims. It will therefore be advisable to delay the sailing of the ship. Now, I do not say that the decision should rest absolutely with the shipping company. That is to say, if they delay, they are not the persons to decide if the cause of such delay is reasonable or otherwise. I lay down in my amendment that the cause must be endorsed as reasonable by the port officer or any competent authority that Government may name and we may surely depend on the port officer or such competent authority to regard it as a reasonable cause if he thought it was in the interest of the pilgrims to delay the departure of the ship. For these reasons, I propose my amendment which I hope Government will see their way to accept.

THE HONOURABLE THE PRESIDENT: Amendment moved:

"That in clause 2, the following words be added at the end of the first proviso to sub-clause (1) of clause 209C, namely:

'or provided that the merchant or owner or agent shall satisfy the port officer or other competent Government authority at the port of embarkation that any detention after the advertised date of sailing is due to a reasonable cause' "

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Mr. President, I wish to enter a very emphatic protest against the amendment moved by my Honourable friend Sir Phiroze Sethna on two grounds; one is a legal ground and the other a humanitarian ground. What my friend seeks to import into this Bill is that the liability of the company to pay compensation for a breach of its advertised promise to carry the pilgrims on a particular date is to be not merely confined to the proviso embodied in the Bill itself, namely, the failure of the ship to sail on a particular date due to causes which are beyond the control of shipping company, but also



[Mr. V. Ramadas Pantulu.]

to exempt the company whenever they can show what he terms a "reasonable cause" for the failure. Normally speaking, a provision in any Act which entitles one party to a contract to break it on reasonable grounds is opposed to the very elements of jurisprudence. If that was so, Sir, many contractors for supplies of goods during the war would have abstained from performing their contracts because such a performance would have been to their ruin. Nothing can be more reasonable for a man not to perform his contract, if he is going to be ruined by its performance. Therefore, it is a fundamentally novel principle which my friend wants to introduce, namely, that if one party to a contract is unable to perform his contract for a reasonable cause, he should be exempted from liability for its non-performance. I know that in the case of common carriers like the railways and the shipping companies there may be a provision in the contract itself, under which passengers are booked, enabling the company to cancel the passage under certain conditions in the interests of the public. Because these railway companies and shipping companies are serving a very useful public purpose and are acting in the interests of public, the Legislature has thought fit to invest them with certain extraordinary powers to cancel their contracts. But the very object of this Bill is to protect the interests of a large number of pilgrims who embark on these ships and deprive the shipping company of the liberty to alter the date of sailing and to compel the boat to sail on the particular advertised date. Failure to sail on the advertised date will be a breach of contract. Sir, what do we find in this Bill by way of compensation to the pilgrims? The compensation which has been fixed for these pilgrims is the magnificent sum of one rupee per diem. Pilgrims who are stranded at Bombay or Karachi will hardly be able to buy one meal with this sum. My friend, who is a champion of the capitalist shipping companies has on the top of it thought fit to hem round this provision with a further proviso which will practically nullify the whole of this Bill. I am really surprised that an advocate of popular rights like the Honourable Sir Phiroze Sethna should have thought fit to bring such an extraordinary amendment to this Bill which will nullify the benefit of its other provisions. On the legal ground, therefore, a company ought not to be allowed to deal as it likes with the pilgrims with whom it has contracted to sail on a specified date and, therefore, this amendment should be considered to be opposed to sound legal principles.

My second objection is from the humanitarian point of view. I know something of these pilgrims, as I have seen them at Bombay and other places. The people who are affected mostly are our Muhammadan brethren who go on these pilgrimages. For them to be stranded at these places and to be told by the shipping companies that there is a reasonable excuse for not starting the boat, is small consolation indeed. My friend has very ingeniously put forward an illustration. He says, one or two hundred people would be left behind if the 1,200 who are ready to embark are carried on a particular date. There will be enough resources either at the disposal of the Government or other shipping companies to provide some means of passage for these people who are left behind. So, for the sake of these 100 or 200 pilgrims the majority of the pilgrims numbering about 1,200 should not be inconvenienced. It is

really for the benefit of the steamship companies that the advertised dates are sought to be postponed. I am surprised at the moderation with which this Bill is framed. If I had anything to do with it, I would have put a compensation of Rs. 5 a day. Moreover, shipping companies are given enormous powers to put obstacles in the way of paying compensation to these poor pilgrims. The Bill should have made the pilgrim officer appointed by the Government to be the sole judge of the right to compensation and his decision on the spot final. Instead of that, the company can enter a protest and get the whole thing referred to a Presidency Magistrate or a first class Magistrate sitting in the port from which the boat embarks. The pilgrims would be kept out of their compensation till the matter was decided. The shipping companies will have the pleasure of seeing that these men are deprived of their compensation. I think these provisions are not well conceived. They should go much further than they have gone. The Government have put into this Bill provisions which are already to be found in substance in the Bombay Act of 1887, in regard to fining companies for failure to start on advertised dates. My friend who has been in Bombay has never tried to get the Bombay Act amended if he found that the provisions worked hardship to the shipping companies. The mere fact that he has not done so far shows that the shipping companies have not suffered. I do enter a very strong protest against the amendment moved by my friend Sir Phiroze Sethna. It is a capitalist amendment and I hope this House will throw it out.

\*THE HONOURABLE SAIYID ALAY NABI (United Provinces West : Muhammadan): Sir, I must admit at once that it was a shock to me to find this amendment on the paper in the name of Sir Phiroze Sethna. As a matter of fact, his amendment cuts at the very root of the amending Bill. The reasons that have necessitated the framing of this Bill were important enough, but the most important point was the fixation of the dates of the departure of ships. That is the most important point, and the public at large is entitled to know the exact date on which a certain ship is to sail, to make its own arrangements. If a ship, which carries passengers and advertises a day for its departure does not keep to the scheduled time, of course, it gives a great cause of complaint to the public. After all, all the common carriers, like the railways and ships, have to run according to the time that they have advertised.

THE HONOURABLE SIR JOHN BELL (Bengal Chamber of Commerce): No.

THE HONOURABLE SAIYID ALAY NABI: They do run according to the advertised time; I have yet to learn that they do not run according to the advertised time. And a shipping company which advertises the date of sailing of its ships to people who come from far off places has to be punctual and regular in the departure of its ships. The only reason that has been assigned by Sir Phiroze Sethna is this. Supposing the last ship sails and there are 200 to 400 passengers, who on account of certain causes are unable to go, then there is a great hardship to those passengers that have got to be left behind. After all, as has been already stated by my friend Mr. Ramadas Pantulu, there are about 1,000 or 1,200 passengers waiting for the ship to start and you

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\* Speech not corrected by the Honourable Member.

[Saiyid Alay Nabi.]

cannot possibly expect them to wait for the simple reason that another 200 passengers have yet to come in. That is not fair to the travelling public. My friend Sir Phiroze Sethna wants to put in a "reasonable cause" as a lawful excuse for them not to start the ship. The reasonable cause is as indefinite, as vague and as ambiguous as it could possibly be. It is necessary in legislation to put in, in specific and reasonable words, the intention of the Legislature. Now, this lawful excuse has been as a matter of fact explained and very clearly explained in the proviso to section 209C to which my Honourable friend Sir Phiroze Sethna seeks to add another proviso. The explanation is very clear and specific—it is given in the words "owing to any cause not arising from the act or default of the master, owner or agent." Now, the reason why the ship cannot sail at the scheduled time must be a reason beyond the control of the owner, master or agent of the ship. It must not be due to any act of commission or omission on his part. The meaning of it is that if he cannot help, and if he is unable to help the delay, then in that case only is he entitled to postpone the departure of the ship and not otherwise. The reason must be beyond his control. The definition of "reasonable cause" given here, I think, is meant for the benefit of the public and that is very fair to the public; otherwise "reasonable cause" is not an easily definable term; it cannot possibly be defined, and opinions may vary on it; there can be as many opinions on it as there are people who seek to define it, and it would be very difficult to work; it might even work great hardship on the travelling public. I would, therefore, oppose the motion which has been moved by my friend, the Honourable Sir Phiroze Sethna.

THE HONOURABLE SIR ARTHUR FROMM (Bombay Chamber of Commerce): Sir, in rising to speak very briefly on this amendment it might be thought by the Honourable Members of this Council that I have a direct interest in the carriage of pilgrims. I would like to assure Honourable Members that that is not so. I listened with attention to what my friend, Mr. Ramadas Pantulu said on the matter of "contract." Of course he knows very much more about contracts, being a lawyer, than I do. But what I want to point out is that the question of contracts to my mind does not arise. You do not get a contract for a ship sailing on a fixed date. If you look at the papers you will see advertised "sailing on or about" and that is obviously necessary in connection with ships. The Honourable Mr. Pantulu went on to say that he was astonished at the moderation with which this Bill had been framed in connection with the penalties on shipping companies. What I want to point out to this Council is that there is no obligation on any shipping company to supply a pilgrim ship at all; and if you make the rules and regulations in connection with the carriage of pilgrims so strict as to leave no room for a reasonable profit in the enterprise, you will not get any pilgrim ships at all. (*An Honourable Member*. "Plenty"). Why should you? The shipping companies which carry pilgrims do not do so as a charitable institution. Then again, if you drive shipping companies too hard in this matter of carrying pilgrims, what course do you think a reasonable agent would take? He would demand passage money down from all pilgrims booked to sail by a certain ship on or about a certain date. Then having given a reasonable time for these pilgrims to arrive, and the ship sailed without some of them, they

would forfeit their passage money ; and if they wish to sail by another ship those left behind would have to pay again.

On this question of it being a great hardship to pilgrims to be asked to stay another day or two, what is the experience of shipping companies in connection with pilgrims ? The majority of the pilgrims arrive and camp down in the port of sailing many days before the ship is advertised to sail. I contend that the hardship to pilgrims who may be asked to stay one or two days more in the port from which they are about to sail is nothing like the hardship which would be experienced by say 200 or 300 pilgrims who for some reason or other are delayed in reaching the port by a day or two and find when they arrive there that the ship has left.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, I had no intention of taking part in this debate, but I find from the speech of my friend, the Honourable Sir Arthur Froom, that he thinks the shipping companies can, after the passing of this Bill into law, say that they are going to sail on or about a certain date. He has not perhaps noticed that under section 209 B(7) it is obligatory on the master, owner or agent of any ship to give to the pilgrim officer the date on which the ship is to sail from that port ; so that he is bound to give a particular date and he would not be complying with the requisition contained in that section if he merely says the ship is to sail on or about a certain date. Further under sub-clause (2) of the same section, it is obligatory on the master, owner or agent of a ship to give that information within three days of the date of demand by the pilgrim officer. No doubt I strongly deprecate shipping companies always saying that their ships will sail on or about a certain date, because generally though they sail on the same date as advertised, I find that there is a great deal of latitude in the matter. The hour of sailing is ordinarily notified in the case of passenger ships ; and I am glad it has been laid down that in the case of these ships at least the day on which they sail is bound to be notified ; and if the companies do not notify that, my Honourable friend, Sir Arthur Froom, will see that under clause 209B they will be punished with fine which may extend to Rs. 2,000 ; so that a definite obligation is laid upon shipping companies and it is a contractual obligation from which they cannot escape as they can if they are allowed to say that a ship will sail on or about a certain date.

One word, Sir, as regards the amendment. The amendment says if, in the opinion of the officer, there is reasonable cause, then the master, owner or agent will not be liable to pay compensation. I can understand it if it had been put there that it is due to a reasonable cause which is beyond the control of the master, owner or agent of the ship.

THE HONOURABLE MR. V. RAMADAS PANTULU : It is already there in the proviso.

THE HONOURABLE MR. P. C. DESIKA CHARI : It is already there, but this takes away that safeguard. I, therefore, strongly oppose the amendment moved by my Honourable friend, Sir Phiroze Sethna.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : Sir, I find that there is a general consensus of opinion in the House in favour of the rejection of this amendment, and, so far as I am concerned, I should express my regret that I am not able to accept it on

[Sir Muhammad Habibullah.]

behalf of Government. I think I may just refer as briefly as I can to a few criticisms that have been made by my Honourable friend, Sir Arthur Froom. I could very well have appreciated his position as a representative of large shipping companies if this provision had been incorporated in this Bill for the first time in the history of legislation in India. My Honourable friend must be fully aware that this provision existed already in the Bombay Act of the year 1887. The only difference between the provisions made in the Bombay Act and those made in the Bill under consideration is that while in the Bombay Act the master, owner or agent of a ship who did not sail it according to the time which he had advertised was liable to a fine of Rs. 1,000 for the first day and Rs. 500 on every subsequent day of its detention and the whole of this fine went into the Government exchequer, this Bill has adopted a more equitable method of utilizing the money so collected in the shape of detention allowance to those unfortunate pilgrims who, for reasons not due to themselves, have been detained at a port of embarkation beyond the time which they had originally calculated when they came to the port. Therefore, Sir, I do not think that the question now arises whether it is right on the part of the Government of India to incorporate a provision like this in this Bill. They are not doing it for the first time; the law is there already, it has been in operation for decades past. No complaint has been urged so far against any harm which has arisen by the working of that law. No representations have been made to the Government of India so far that that law is vicious and therefore it should be eliminated from the Statute-book. Furthermore, Sir, when this Bill went up before the Select Committee, they unanimously passed it. May I point out to the House that on that Select Committee we had a representative of the shipping company in the person of Sir Walter Willson. I do not think, Sir, that we are now attempting to do anything directly against the interests of the shipping companies and with any deliberate intention. Well, the Honourable the Mover gave as an illustration that if a particular ship was intended to carry, say 1,500 pilgrims, but there were only 1,100 on board the steamer who had purchased their tickets, is it reasonable to ask that the master, owner or agent of the ship must at once sail the ship without waiting for the remaining 400 to come? May I appeal to the Honourable Member to put himself in that unhappy position? Is it the general rule of convenience that the majority should suffer for the negligence of the minority? I should certainly answer that question in an emphatic negative. This provision is intended not merely to get the shipping companies to start their ships on the scheduled dates, but it is as much intended to force the pilgrim to go in time and take his chance of catching the particular steamer available for him. If Honourable Members had only seen the remaining provisions of this Bill, they would have observed that clause 2 seeks to add a new section 209B (1) to the Indian Merchant Shipping Act. This section enjoins the master, owner or agent to supply the pilgrim officer, sufficiently in advance of the sailing of the ships, with a regular programme or schedule of the sailings of the ships which are expected to sail from that particular port and carry pilgrims. Now, after he has furnished the pilgrim officer with that schedule, then some time before the actual date of the sailing of a particular ship he is expected to advertise the exact date on which each ship included in the schedule will sail, and that is provided for in clause 3 of

the same section. Therefore we see that there is in the first instance a general schedule prepared by the master, owner or agent of the ship and furnished to the pilgrim officer. Now, out of the ships which are enumerated in the schedule, the master, owner or agent of the ship picks up one after another and fixes the exact date on which they will sail. This notification is intended for the information of the public. The law has not laid down any given period which ought to intervene between the issue of the notification and the actual date of sailing. That, for very good reasons, we have reserved to Government. The Government, under the rule-making power, will specify the period which should necessarily elapse between the issue of the notification advertising the sailing of ships and the actual date of sailing, because we may have to take into consideration various circumstances which may be operative in particular ports. What may be easily applicable in the case of Bombay may not be applicable in the case of Karachi, and what may be applicable in the case of Karachi may not be applicable in the case of Calcutta. Therefore, we have reserved power under this Bill under the rule-making powers to specify what period should intervene between the issue of the notification by the master, owner or agent of the ship and the actual sailing of the ship, so that there may be as much interval as possible for the information to reach the ears of the pilgrims who gather at those ports from all parts of India and make it possible for them to catch the particular ship which they intend to do. Now it is perfectly possible that the last ship which may leave from either of these three ports may labour under certain disadvantages. Well, I can conceive there may be some such thing, but I would only ask the House whether, for the sake of a contingency which may arise or may not arise, or even for the sake of only one ship out of many which sail from each port, and which may experience certain difficulties in one port but may not experience them in other ports at all, it is right that we should give this unlimited power either to the port officer or to some other authority to tell the master or owner on the latter's requisition: "Yes, I authorise you to take another 8 days, because under Sir Phiroze Sethna's amendment the ship can take 1,500 pilgrims, but it is loaded with only 1,100." And I think I may in this connection say that so far as Bombay and Karachi are concerned, there has never been experienced any difficulty in carrying these ships full, or rather my experience this year has been that I was asked to exercise the extraordinary power which I possess under the law to allow the shipping company to carry ships overloaded with passengers to the extent of 20 per cent.

I confess some difficulty may arise in Calcutta, which, unfortunately has not been viewed with favour by the pilgrim community.

12 Noon.

But I may tell the House that it has not been settled whether it will remain a permanent port of embarkation

for pilgrims. We have watched it for the first year, we have watched it for the second year, and we hope to take up the question as to whether Calcutta should continue as a port. So far as Bombay and Karachi are concerned, there is no difficulty. I have not dealt with the legal aspect of the problem, because my knowledge of law is so antiquated that I regard myself more or less as a layman in this respect. The Honourable Mr. Ramadas Pantulu and the Honourable Sir Arthur Froom have discussed it between themselves. I am not basing the logic of my facts merely on the legal aspect of it or anything like it. You have

[Sir Muhammad Habibullah.]

imposed an obligation, a statutory obligation, on the travelling public. No other travelling public has got such special obligation imposed upon it. Do we insist that people who travel by train shall not be allowed to board the train unless and until they provide themselves with return tickets or deposit money for their return journey? This is a special class of traffic and, therefore, we imposed a special obligation on the shoulders of the traffic by compelling them to take return tickets or to deposit the cost of the return ticket. It is not unreasonable that we should impose some obligation on the shoulders of the shipping companies also, so that the whole scheme may work with the object we have in view, namely, the comfort and convenience of the pilgrims. I, therefore, hope that the House will reject this amendment.

THE HONOURABLE SIR JOHN BELL: Sir, I had hoped that it would not be necessary for me to speak on this motion of my Honourable friend Sir Phiroze Sethna for two reasons. In the first place, I thought that without hesitation my Honourable friend Sir Muhammad Habibullah would have accepted the amendment of my Honourable friend; and, in the second place, although it is within the knowledge of Honourable friends of this House that my interest in the pilgrim traffic is so indirect as to be almost negligible, yet I cannot exactly say that I am not either directly or indirectly interested in it. In these circumstances, I would have preferred not to have spoken and I would not have done so had it not been that it seems to me that there has been a considerable amount of misapprehension, particularly on the part of my Muhammadan friends on my left, as to the meaning of the amendment that has been proposed. It has been suggested, or rather has been conveyed to the House, that this Bill is a measure for the protection of pilgrims from rapacious ship-owners who are doing their best to get as much out of them as possible without any regard whatever to their interests or comfort. That is not so. The Bill generally appeals to me as being a most appropriate Bill in the interests of a very important class of persons, in all but the one clause to which my Honourable friend has proposed an amendment. This important class of persons, the pilgrims, who travel between Bombay and Jeddah consists of very different kinds of people. Some of them are wealthy and well informed, but others of them come from remote parts of India and elsewhere. Some of them have no knowledge whatever of ocean-travel and the journey to and from Jeddah is to them a very serious undertaking in which they have had no previous experience. Many of these pilgrims arrive in Bombay and the pilgrim steamer by which they are to travel to Jeddah is the first steamer that they have ever seen. It is, therefore, necessary and it is very right, that Government should make special provision for the protection of this class of persons and Government have always done so; and what they have done in the interest of these persons has always been cordially endorsed by ship-owners.

The Bill that my Honourable friend Sir Muhammad Habibullah has referred to, under which pilgrims are compelled to take return tickets or lodge a deposit, was a very necessary one and has obviated very great hardships to pilgrims in Jeddah. How they came to be in Jeddah without funds is another matter, but it is a fact that they were often stranded there and the provision in this Bill has been of great help to them. I say that to show that there is no

objection on the part of ship-owners to any reasonable measure for the protection of pilgrims.

But this particular clause to which I have referred, under which a penalty is imposed upon ship-owners if a ship does not sail on an advertised date, has no parallel in the world. Many of my Honourable friends in this House are widely travelled, including my Honourable friend Sir Muhammad Habibullah himself, and I ask them whether in the course of their whole experience they have ever come across any system of transport by sea or by rail or by road under which a fine is imposed on the transport company for not starting on a particular date. There is one case of one train, and one train only, in the world, in which a penalty is laid for late arrival. That train stands by itself; the fares charged for it are very high and a penalty is paid not in respect of late departure but in respect of late arrival. But that is the only instance that I know of in the world.

Pilgrims go to Jeddah in large numbers from other places than India. Large numbers go from the Straits Settlements; large numbers go from Java; large numbers go from Port Said, Egypt and the surrounding countries, but in none of these cases is such a penalty imposed by the local authority as is suggested to be imposed in this case.

My Honourable friend Mr. Ramadas Pantulu suggests that it should be very much higher than it is. He seems rather surprised that it is so moderate. But he may be interested to know that if it is moderate and if the amount suggested is small it is at least absolutely unique in the whole world.

Now, the provisions of this Act, while I believe they are submitted by Government in the interests of pilgrims, and while I believe it was the honest intention of Governments that the interests of pilgrims should be protected to a greater extent than they are by this Act, seem to me to be likely to have the opposite effect. In the first place, the Act adversely affects the ship-owner and, in the second place, it adversely affects the pilgrims.

In regard to the ship-owner, I need not take up the time of the House in explaining again what has been very clearly put before the Honourable Members by my Honourable friend Sir Phiroze Sethna. I have no desire to conceal, as one interested in shipping, that one of my objections to the clause remaining unamended is that it will adversely affect ship-owners in the way that has been suggested, but it will also adversely affect the pilgrims themselves. This will not happen in the middle of the pilgrim season, but it will certainly happen at the beginning of the pilgrim season and towards the end. My Honourable friend Sir Phiroze Sethna and also my Honourable friend Sir Arthur Froom have pointed out the difficulty that may occur at the end of the Haj season. I think it will cause very serious inconvenience if a certain number of pilgrims who, through perhaps no fault of their own, have been detained in the course of their journey to Calcutta or Bombay should be condemned to miss the Haj altogether, because the provisions of this Bill are so rigid that even the local authorities are unable to make any provision in order to meet such cases.

What is the amendment that is actually proposed? I submit that it is a very reasonable amendment indeed. It is not suggested that ship-owners should have any right to detain a ship for any reason at all. It is not suggested



[Sir John Bell.]

that it should be laid down in the Bill that ships may be detained for a reasonable cause. All that is suggested is that when special circumstances arise, and when it will be in the interests of the ship-owner or of the pilgrims who are either in one of the pilgrim ports or on their way to that port, that a ship should be detained, a competent authority should have the power to allow that detention without penalty. It might perhaps be said that the ship owner might take advantage of this and endeavour to have the ship detained for, say, a very small number of passengers in order to add to the profits of the voyage. But, as the decision is to lie entirely with a competent authority, that position could not arise. On the other hand, if it were known to that competent authority that there were a certain number of pilgrims who would be seriously inconvenienced if the rules laid down in this Bill were rigidly applied, he could then authorise the detention of the ship in order to meet their convenience.

The advantage both to the Government and to the pilgrims of having a provision in the Act which will admit of a competent Government official at the port of embarkation having this power seems to me so obvious that I am rather surprised that this amendment has come from my Honourable friend Sir Phiroze Sethna. I should rather have thought that having this provision in the Bill was so advantageous to Government, to the pilgrims, that the amendment would have come from Government themselves and that it would have been supported by my Honourable friends, the Muhammadan Members, of this House. I think it is entirely reasonable and I should like my Muhammadan friends to get rid of the idea that the amendment is proposed in the interests of ship-owners. It is not. It seems to me that, while ship-owners may, to a certain extent, be inconvenienced by the strict application of the provisions of this Bill, the inconvenience will not be a very serious one to them. But, if the pilgrims who have left their homes and who are journeying from long distances in order to make the Haj, are caught out on the strict application of this Act, the inconvenience to them will be very serious indeed, and it is an inconvenience which it ought to be within the power of Government to obviate. As a matter of fact, however sympathetic the Government authorities at the port of embarkation may be towards these pilgrims who have been put to inconvenience, they will have no power whatever to detain the ship in order to meet their special cases. There would be no time in ordinary circumstances to apply to the Government of India for special powers, because, before these special powers could be obtained, the ship would become liable to penalty. So the ship owner would have to make up his mind whether he was going to incur the penalty and stay, or avoid the penalty and go, putting these pilgrims to great inconvenience. I think the amendment is a very reasonable one and that it is in the interests of every one connected with the pilgrim traffic from Government downwards. I would again appeal to my Honourable friend to resile from the position which he has taken up, and to agree to accept this most reasonable amendment proposed by my Honourable friend Sir Phiroze Sethna.

THE HONOURABLE SAYIED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan) : Sir, if I intervene in this debate it is to thank my Honourable friend Sir Arthur Froom for having made clear the real significance of the amendment. The observations made by him have tended to clear the

unreal atmosphere with which it was attempted to enshroud the matter at the outset. From the fears expressed by Sir Arthur Froom we can see that after all the reason that has prompted the Mover of this amendment is not the interests of the travelling public but it is the interests of the capitalists, the pilgrim ship owners.

THE HONOURABLE SIR PRIROZE SETHNA : Certainly not.

THE HONOURABLE SAIYED MOHAMED PADSHA SAHIB BAHADUR : We were told by Sir Arthur Froom that unless the penalty that is attempted to be imposed upon the owners of these ships is not removed and unless the attempts that were made to put them under disabilities were not given up, the owners of these ships would cease to ply their ships for the carrying of pilgrims.

Now, Sir, if I oppose this amendment, it is merely on the simple ground that it is positively injurious to the interests of the pilgrim traffic.

THE HONOURABLE SIR ARTHUR FROOM : Sir, I rise on a point of explanation. I made those remarks in reply to the speech of my Honourable friend Mr. Ramadas Pantulu.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : Whatever may be the reason, the significance is there, *viz.*, that if the House fails to carry this amendment and fails to remove the penalty from the ship owners, the ship owners would cease to carry the pilgrim traffic. Now, Sir, as I was saying, it is a matter of common knowledge that most of these pilgrims are extremely poor and most of them have enough only to make both ends meet. And if these people are allowed to wait indefinitely either at the port of embarkation or on their voyage back at the place of pilgrimage or at Jeddah, they would be put to very great hardships. All this time that they would be waiting, they would have to draw upon their slender resources which after all are hardly enough to last for the journey which they have undertaken.

I feel, Sir, that if we accept this amendment it will be imposing very great hardships on the pilgrims.

There is yet another reason why I oppose this amendment. It was said by the Honourable the Leader of the House that section 209C was meant not only for the purpose of making this sailing of ships more regular but also for the purpose of enforcing the pilgrim traffic to be punctual and to prevent it from becoming irregular. Now, Sir, if in order to enable some of these pilgrims to arrive at the port of embarkation later than the date originally fixed for sailing, we make this concession, we shall be running the risk of encouraging those people who always take these things very easy and delay a lot and we will also thereby be postponing the date of sailing of the ship and of the ships that follow ; unless we stringently enforce the sailing dates, it will lead to great hardships to the pilgrims. With these words I oppose the amendment.

THE HONOURABLE THE PRESIDENT : The original question was :

“That clause 2 do stand part of the Bill.”

Since which an amendment has been moved :

“That the following words be added at the end of the first proviso to sub-clause (1) of clause 209C, namely :

‘or provided, that the merchant or owner or agent shall satisfy the port officer or other competent Government authority at the port of embarkation that any detention after the advertised date of sailing is due to a reasonable cause.’”

[The President.]

The question I have to put is that that amendment be made.

The motion was negatived.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :  
Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

### INDIAN DIVORCE (AMENDMENT) BILL.

THE HONOURABLE MR. H. G. HAIG (Home Secretary): Sir, I beg to move that the Bill further to amend the Indian Divorce Act for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

This Bill seeks to empower the Government of India to appoint for each High Court an officer who shall within the jurisdiction of the High Court exercise the powers in respect of divorce proceedings which are exercised in England by the King's Proctor. The question arose out of the recent enactment by Parliament of the Indian and Colonial Divorce Jurisdiction Act, whereby powers were conferred on the Courts in India to grant divorce to persons domiciled in England. In connection with that legislation it was provided that the procedure in England should be applied to those persons who took advantage of these special provisions in India, and power was taken accordingly to appoint in India for this limited purpose an officer to exercise these powers analogous to those of the King's Proctor. The object of this Bill is to make similar provision for the ordinary proceedings under the Indian Divorce Act, so that there shall be no difference in procedure between parties who are domiciled in India and parties who are domiciled in England. The Bill was introduced in the Legislative Assembly in March last by Sir Alexander Muddiman and was taken into consideration and passed by the Assembly on the 24th of August last.

I move that the Bill be taken into consideration.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. H. G. HAIG : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

## INDIAN LIMITATION (AMENDMENT) BILL.

### CONSTITUTION OF THE SELECT COMMITTEE.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, I beg to move that the Select Committee to which the Bill further to amend the Indian Limitation Act, 1908, was referred, do consist of the following members, namely: the Honourable Sir Sankaran Nair, the Honourable Saiyid Alay Nabi, the Honourable Mr. G. S. Khaparde, the Honourable Mr. Kumar Sankar Ray Chaudhury, and the Mover; and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four.

Under the rules, of course, the Honourable the Law Member will be a member of the Committee. At one time I thought that the Honourable the Home Secretary, whose services I was anxious to secure on this Committee, would not come within the Committee unless I made a motion including his name; but now, Sir, thanks to the ingenuity of the Legislative Department, I am assured that the Honourable Mr. Haig will be the Home Member for purposes of legislation so far as this House is concerned. I congratulate him on that and I am glad that his services will be available to us on this interpretation of the rules.

Sir, I move this motion.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Wednesday, the 7th September, 1927.



## COUNCIL OF STATE.

*Wednesday, 7th September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### MEMBER SWORN :

The Honourable Sir Denys de Saumarez Bray, K.C.I.E., C.S.I., C.B.E.,  
(Foreign Secretary).

### QUESTION AND ANSWER.

\* 107.

#### GUARDIAN FOR INDIAN CADETS AT SANDHURST.

108. THE HONOURABLE SIR PHIROZE SETHNA : (a) Will Government be pleased to state if Colonel Stooks is at present the guardian for Indian Cadets at Sandhurst ?

(b) If the reply to (a) is in the affirmative, is his appointment made for any fixed period, and when will such period expire ?

(c) If the reply to (a) is in the negative, what is the name of the officer who is at present such guardian ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF :

(a) Yes.

(b) His appointment is not for any fixed period.

(c) Does not arise.

THE HONOURABLE THE PRESIDENT : I would invite the attention of the Council to the fact that the Honourable Seth Govind Das gave notice of a question consisting of some eight parts which must have involved the department concerned in the expenditure of a good deal of time in the preparation of the answer. He does not even take the trouble of coming to the Council to put his question on the day on which it is down on the list of business.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : Could not somebody else ask this question in view of the fact that so much money has been spent in the preparation of its answer ?

THE HONOURABLE THE PRESIDENT : The question could have been asked by any other Honourable Member, but no Honourable Member took the opportunity of asking it on behalf of the absentee Member.

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\* Not put at the meeting but the question and answer to it will be found at page 1040 of these proceedings.

**QUESTION NOT PUT, OWING TO THE ABSENCE OF THE QUESTIONER, AND ANSWER TO THE SAME.**

**ACCEPTANCE BY THE GREAT INDIAN PENINSULA RAILWAY OF THE TENDER OF MESSRS. BRAITHWAITE AND COMPANY FOR REBUILDING THE NERBUDDA BRIDGE.**

107. THE HONOURABLE SETH GOVIND DAS : (a) Will the Government be pleased to state if it is a fact that, in accepting the tender of Messrs. Braithwaite and Company by private agreement and not in the open market, the Great Indian Peninsula Railway authorities were largely influenced by the contractors undertaking to provide a new bridge over the Nerbudda between Shahpura and Bikrampur, by the 1st July 1927 ?

(b) Will the Government be pleased to state their reasons for not having called for tenders in the open market and also disclose the terms of the contract with Messrs. Braithwaite and Company for constructing this bridge ?

(c) Is it a fact that no limit to the cost of this bridge was fixed by the railway company in their agreement with the contracting engineers ?

(d) Will the Government be pleased to state if it is a fact that, after securing the acceptance of Messrs. Braithwaite and Company's tender, the contracting engineers have applied for and secured an extension of the time limit by twelve months on the score that they met with unexpected rocks or bad compressed sand in the borings down the bed of the river ?

(e) Will the Government be pleased to state if the Great Indian Peninsula Railway authorities satisfied themselves before accepting Messrs. Braithwaite and Company's tender that the latter took reasonable steps to acquaint themselves with the nature of the sub-soil before they submitted their tender ? If not, on what grounds did the railway authorities think fit to grant an extension of time for completion ?

(f) Will the Government be pleased to state whether it is their intention after 1st July, 1927, to allow Braithwaite and Company to continue working for a premium on actual cost ; if not, will the Government be pleased to state the terms on which Braithwaite and Company's services will be retained ?

(g) Will the Government be pleased to state why the damaged bridge over the Nerbudda between Shahpura and Bikrampur was not restored and sold to the Public Works Department for the sum previously agreed upon, namely, six lacs of rupees ?

(h) Will the Government be pleased to state if it is a fact that, after the washaway in September last, Messrs. Braithwaite and Company were allowed to utilise all the serviceable material of this old bridge in their dredging operations ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) and (b). In view of the serious dislocation of traffic caused by the destruction of the Nerbudda Bridge and the urgent need of restoring communications at the earliest possible date the Government of India accepted the proposal of the Great Indian Peninsula Railway that the contract for rebuilding the bridge should be given to Messrs. Braithwaite and Company, a firm of contractors, who were already satisfactorily carrying out a number of railway contracts. The contractors offered to recon-

struct the bridge before the monsoon of 1927 under a heavy penalty, the new bridge to be of a design which could be carried out by using mainly material available from Messrs. Tatas' Works. It did not appear to the Railway Board that any arrangements could be made for the work which offered a better chance of restoring the bridge within that time. Nor did they consider that the delay which would be involved in calling for tenders would be justified, in the interests of the public.

The contract as finally entered into provides for payment of actual costs plus 10 per cent on the cost of the work in the piers and abutments and on the cost of erecting the steel girders at site ; there are items the cost of which could obviously not be calculated with great accuracy beforehand. Definite rates per ton were fixed for supplying the various steel structures.

(c) While no limiting sum was embodied in the contract the work had to be done under the supervision and control of the railway engineers and according to designs approved by them. It was calculated that on the approved design the total cost of the work under the contract would not exceed the estimate for the work which had been sanctioned by Government.

(d) Under the terms of the contract it was provided that if the work was finished by 31st July 1927 a bonus would be payable to the contractors of 10 per cent of the final payment for all the work in connection with the fabrication of the steel structures and 15 per cent for the balance of the work including erection but excluding the cost of plant. As they have not fulfilled this condition this bonus will not be payable. No extension beyond this date has been sanctioned for purposes of this bonus.

(e) Government are not aware of the nature of the discussions between the Great Indian Peninsula Railway administration and the contractors about the character of the sub-soil, but as the Honourable Member will see from my reply to (d) there was no question of granting an extension of time for completion.

(f) Government have no intention of terminating the present contract so long as the contractors abide by the conditions laid down in it.

(g) The damage caused by the flood to the steel work of the bridge was so extensive as to render it impossible for the girders to be reconstructed and made serviceable at any reasonable cost. An examination made of the piers and abutments showed that they were so badly shaken and damaged that they could not be repaired so as to be made safe and serviceable for a road bridge, and in fact orders had to be issued for them to be dismantled because there was a risk of their causing damage to the new bridge works. It was, therefore, clear that the remains of the bridge would be of no practical use to the local Government.

(h) Government have no information, but as the remains of the old bridge were not in a condition to be reconstructed, there would seem to be no reason against utilising them in the construction of the new bridge.

## THE CRIMINAL LAW REPEALING AND AMENDING BILL.

THE HONOURABLE THE PRESIDENT : The Council will now resume discussion on the motion of the Honourable Mr. Ramadas Pantulu in regard to the Bill for the repeal of certain provisions of the Criminal Law Amendment Act.



**THE HONOURABLE MR. G. A. NATESAN** (Madras : Nominated Non-Official) : Sir, I feel I need not make any apology for intervening in this discussion. When the Government of India appointed the Repressive Laws Committee in 1921, I had the honour of being invited by that Committee to give evidence on behalf of the Madras Liberal League. I had also the privilege of taking part in a discussion upon this very question on the floor of this House in the year 1925. My Honourable colleagues will remember that in 1908, when this measure was introduced in the old Imperial Legislative Council, it was made clear that it was more or less a temporary measure. My Honourable friend Sir Maneckji Dadabhoy who took part in the discussion of this question the other day made the point very clear in the course of his observations. The Honourable Sir Maneckji Dadabhoy said on that occasion :

" But, my Lord, though I support this legislation, I must most distinctly state that I should not like to see it placed permanently on the Statute-book of our country and that I would urge that as soon as a normal state of things is restored in Bengal, and I trust that may not be far distant, Your Excellency's Government will set itself to repeal this measure ".

" I think it would be advisable and more popularly acceptable if the Honourable Mover of the Bill could see his way to insert a provision limiting the operation of the Act for a stated period only ".

**THE HONOURABLE SIR MANECKJI DADABHOY** (Central Provinces Nominated Non-Official) : But, are these normal times ?

**THE HONOURABLE MR. G. A. NATESAN** : That question I am going to take up later on. I would also point out that the Maharaja of Darbhanga who sat in that Council also expressed the view that it would be extremely difficult for the Government to find out how far an association was lawful or unlawful. But the more important observation on that occasion came from a jurist of great renown and reputation, a man whose name is remembered unto this day and will be remembered for all time to come, I refer to the late Dr. Rash Behari Ghose. He pleaded for the inclusion of the element of knowledge in the provisions of the Act, thus indicating that it should be for the prosecution to prove in the first instance that a certain association was criminal and he urged that it was improper to lay the burden of proof on the association simply because the Government wanted to declare a certain association unlawful. Sir, the law was thus passed and it was in operation for a number of years. In 1921, after the introduction of the Montagu-Chelmsford reforms, when many of my countrymen were anxious to co-operate with the Government and do their best to work the reforms and show that the reforms were capable of being worked, in some instances and in some directions at least for the better government and for the constitutional advance of this country, they felt that the inauguration of the reforms should begin with a clean slate. In this very Council, my Honourable friend, the Right Honourable (then Mr.) Sastri introduced a Resolution that a Committee should be constituted to examine and report how far the repressive laws could be repealed. That Resolution was accepted unanimously by this House and a Committee was appointed. That Committee was constituted, consisting of officials and non-officials alike, and it was presided over by Dr. Sapru. Among the other members of the Committee there were men like Sir Sivaswamy Aiyer, Dr. Gour, Sir William Vincent and

Mr. Hammond, now one of the Governors of a Province in India. After hearing a volume of evidence both in favour and against, the Committee came to the conclusion and advised the Government that the repeal of Part II of the Criminal Law Amendment Act should be deferred for the present. I state the exact word because there is a certain amount of confusion as to what exactly the Committee did. It will not be correct or accurate to say that the Committee said it should be repealed. What they said was :—

“ We advise the repeal of Part II of the Criminal Law Amendment Act should be deferred for the present ”.

After all, the inference from that—an inference which was warranted by the other remarks in the Report—is that the Committee thought that in their opinion there was a reasonable case for repealing the Act. Mind, that this conclusion was arrived at by cross-examination of a number of witnesses among whom I was one. They simply had a doubt whether the Act could be repealed immediately. They said it could be repealed in course of time. They thought the time had not arrived then. The simple question now is whether the time has now arrived. We have now reached the third stage in the history of this question. In 1923, this question came up again before the Assembly. Mark you, it came up before the Assembly for the repeal of this clause altogether and there was a considerable amount of discussion and you, Sir, will perhaps be surprised to know that in this discussion several most eminent members of our Bar, those who have had great administrative experience, those who have been members of the executive Government in various provinces, men like Sir Sivaswamy Aiyer, Sir Chiman Lal Setalvad and others took part, and they voted for the repeal of this clause as a whole. When I say that men like Sir Sivaswamy Aiyer, Sir Chiman Lal Setalvad, Diwan Bahadur Rangachariyar, Diwan Bahadur Ramachandra Rao and others took part in it and voted for the repeal, I believe I make out a fair case that the question should now be considered upon its merits. From this again, we pass on to another stage when the question was debated here. Now the motion moved by my Honourable friend Mr. Ramadas is not for the repeal of Part II of the Criminal Law Amendment Act ; he only wants an enabling provision to give the right to an aggrieved person or association to appeal to the High Court. That, Sir, is a very simple question. We ought not to cloud the issue by raising various things which suggest themselves to the imagination of certain people. The question has been very rightly asked, has the time arrived for this step to be taken ? We have been told by official authorities that this provision has not been used in all provinces, that even when it has been used, it was used very sparingly. Now I may be allowed to say that from this statement a very fair inference in favour of the view that it should be repealed can be made. In the provinces of Bombay and Madras where the non-co-operation movement was also going on it has never been used ; and I am proud to say I belong to a province where, although the non-co-operation movement, if I may say so, was at its height particularly in the Telegu districts, the Government of my province did not think it necessary to apply this provision at all. We have been told that those who are in favour of this repeal should give some evidence as to where it has been abused. Now it seems to me that it is hardly fair that anyone should get up in this House and say, “ Show me a single instance where it has been abused ”. Whether this thing has been used properly or abused

[Mr. G. A. Natesan.]

could only be demonstrated if there was an outside authority besides the authority itself that applies that Act to say whether it has or has not been abused, for instance the High Court. If there had been some cases in which the High Court, say, had set aside the order of Government, one would be in a position to say there were so many cases—whether it was 10 or 5 or 3—in which the High Court set it aside. As it is, there has been no such opportunity, and the crux of the case, the gravamen of the charge on the popular side, is that once the District Magistrate or the Local Government declares that an association is an unlawful association you cannot have a word more; there is no opportunity given to the person or to the association to prove that it is not an unlawful association or that he is not a member of an unlawful body. When this is the state of affairs, it seems to me that it is hardly fair that those who are in favour of the repeal of the Act should be asked to show instances of abuse. My case, with all due respect to the weight of the authority of those who sit on the opposite benches, is that it is hardly a fair argument to ask us to show an instance of abuse when you have given no opportunity, and the opportunity could only be given if an impartial tribunal like the High Court were there to see that the Act had been properly administered.

Sir, we are told even now that this is not the time for repealing the Act. I beg in all humility to say that that is not at all a correct view. On the other hand, I would go so far as to say that this is the most opportune moment for repealing it. In the first place, should the occasion arise, there is no fear that you have no other provisions of the Penal Code to exercise or put in to operation. Should such an unfortunate emergency arise, I believe there are sections of the Penal Code and also of the Conspiracy Act which warrant me in saying, on the legal advice I have had, that the Government will not be without proper powers to deal with the situation. If I may venture to say so, I do consult my legal friends on the correctness of my views and do sometimes get corrected by them; and I have been told not only by lawyers but by those who have had something to do with the administration of this law and others like Members of the Executive Council, that, so far as certain sections of the Penal Code and the Conspiracy Act are concerned, they are quite enough to meet any untoward emergency that may arise. Not only that, Sir. The simple truth is that Government itself seems to think that it may be withdrawn, but that the time has not yet come. I ask in all fairness can anyone who has studied the political atmosphere at the present day say that this is not the time to repeal this Act? If it is ever possible to repeal an Act like this, it is now. I am sorry that my Honourable friend Sir Maneckji Dadabhoy referred to the communal trouble. The communal trouble in all conscience raises great enough difficulties, but I do not think it should be brought up every moment, because every reference to it might perhaps have the effect of aggravating the evil which we are all most anxious to end. Barring that, however, my submission is, and I make it with all the earnestness and the responsibility I can command, that the present is perhaps the proper atmosphere to carry out the repeal of this Act. What was the state of the country when this Act was passed and for some years after? There was much trouble with what is called the great non-co-operation movement. What has happened now? The leader of that movement has more or less given up politics and is now engaged in the noble pursuit

of encouraging *Khaddar* of removing untouchability and promoting Hindu-Moslem unity which we have all so much at heart and upon which we have lately had such an eloquent and moving appeal from our present Viceroy. Many people, who once took non-co-operation seriously, are now ready and willing to co-operate with the Government. The President elect of the ensuing Congress, Dr. Ansari, the other day made it clear that, if people are anxious to enter the Councils they should work the reforms for what they are worth and try to exercise the responsibilities which are entrusted to them. What I ask is, could you conceive of a better atmosphere or a better opportunity for the Government to show a noble gesture which is so much needed just now and which will perhaps satisfy all parties. Speaking for myself, I am one of those who believe that it is for the good of this country that the British are in India; and I believe that under British rule my country should advance to a stage when we shall be really self-governing and when we shall be as proud of our own country as the Englishman is of his. This Act, I say is one of the open sores, and the sooner you remove it, the better. If you do not remove it you will alienate from the Government, which has enough difficulties already, all that large band of Indians who are still standing by them who hope the reforms will prove a success, and who look forward to a larger measure of reforms because they believe it is to the good of the country that we should be associated with the British Government and that upon that our political salvation rests. I believe, Sir, I am voicing the feeling of all these people when I ask that these small sores, which are a constant source of irritation to people, who are at heart friends of the British Government, should not be allowed to remain. Remove them, and you will shut the mouths even of that small class of critics who are against the Government, because we can then say "Look here, the Criminal Law Amendment Act was introduced at a time of grave emergency but it has now been removed!" There will then be an atmosphere of peace and good will. I ask the Government and Honourable Members opposite to look at this question from the point of view I take. I do not want it to be said that measures of this kind are killed in this council and that all appeals to Government and the other members here to consider them on their merits are in vain. I do not myself take that view; and it is because I feel that the reason, experience and the weight of authority of all people, who have had something to do with the administration of the country, those particularly who have been acting as members of the Executive Councils in various provinces, those who have had opportunities to tackle the problem at the time when the non-co-operation movement was at its height—it is because, I believe, that the experience and the weight of opinion of all these people who count is against the retention of this Act on the Statute-book that I gave to-day my unstinted support, and also because I feel that the task of Government will be made easier and the relations between the Government and the people better if a gesture of this description is now made by the Government.

THE HONOURABLE MR. H. G. HAIG (Home Secretary): Sir, I rise on behalf of Government to oppose this motion. I should like to explain in the first place that it is only the pressure of essential business elsewhere that has prevented the Hon'ble the Home Member being here to oppose it in my place, and I would ask the Council to realise that the fact that I am standing here to voice the view of Government does not imply that Government do not attach great

[Mr. H. G. Haig.]

importance to this motion. On the contrary, the Government of India attach great importance to the retention of the powers which this Bill seeks to take away.

I notice, Sir, that my Honourable friend in introducing this Bill, and the Honourable Mr. Natesan, both laid some stress on what they suggested to be its moderate terms, and take certain credit to themselves for the moderation of their demands. Well, Sir, it is possible that this Bill started on its somewhat erratic course with the idea of putting forward only certain proposals which had been suggested in the previous discussions and which were directed mainly to introducing the High Court into the procedure; but the point I wish to make is that this is not the Bill as it has reached this House. I have a great deal too much respect for the legal abilities of my Honourable friend, the Mover to believe that he regards with complete satisfaction the Bill as it stands; but he must take the gift as he has received it from another place and accept the Bill with all its imperfections. My Honourable friend, Sir Maneckji Dadabhoy, on Monday developed a number of the objections to the Bill with a wealth of legal knowledge to which I cannot aspire; but I wish to put in the first place a few points which strike an ordinary person, non-technical points, but at the same time legal points in this Bill which strike a non-technical mind. My Honourable friend the Mover when he was attacked on certain imperfections of the Bill or what we consider to be certain imperfections, suggested that it was unfair to take such points because non-official Members did not have the facilities for drafting that are at the disposal of the Government. On the particular point which he took, I think the Honourable the Law Member gave him a complete answer, but what I wish to emphasise is that no amount of drafting assistance can render intelligible a Bill on which the author himself has not made up his mind what he means; and that, I think, is what was originally the matter with this Bill and not any technical defects in the drafting. As the Bill originally appeared in the Assembly the provision whereby the Local Government is authorised to declare an association to be unlawful remained in the Act. It has now been taken away. With its disappearance I suggest that the new section 16 becomes almost completely meaningless. What is the position? In order to prove an offence under the Bill as it stands, it is necessary to show that a person is a member of an unlawful association. An unlawful association is defined simply and solely as one which encourages or aids persons to commit acts of violence, etc. In order to prove an offence under section 17 it is necessary to prove by evidence that the association of which a person is a member is an unlawful association within the terms of section 15 (2) (a). The Bill then proceeds to say that any person convicted may appeal to the High Court on the ground that the association in respect of which he was convicted was not an unlawful association. That is obviously the matter in dispute in the trial—obviously a matter on which an appeal must lie and on which the appeal will mainly be argued. It appears to me, Sir, that this provision is rather similar to saying that a person convicted of murder may appeal to the High Court on the ground that he did not kill the deceased. Well, Sir, that may be perfectly sound doctrine, but I do not understand why we should encumber the Statute-book with such glimpses of the obvious.

The main provision of this Bill is the repeal of section 15 (2) (b) and section 16. Those are the powers which enable the local Government to declare an association to be unlawful. Those are the powers whereby it is unnecessary to prove that the association is unlawful. Those are the powers which are attacked by my Honourable friend opposite. But to suggest that when you take away those powers you are doing anything moderate appears to me to be altogether misleading. The proposal is to repeal the kernel of the Act and to leave the Government merely with the husk. If the author of this Bill had any far-sighted views in introducing it—and I should be sorry to suggest that he had—I should suppose that his calculation was that if this Bill were passed Government would be left with only the tattered rags of the existing Act and might themselves take the initiative in repealing an Act which had ceased to be of any practical value. What I wish, therefore, to impress upon the House is that whatever the form in which this proposal has come up, in effect it is a proposal to deprive the Government of its existing powers in Part II of the Criminal Law Amendment Act. It is true that section 15 (2) (a) would remain, but, Sir, practically no use has been made of that section since the enactment of this Act in 1908, and it is I think clear why use is not made of it. In the special circumstances which may justify the employment of the provisions of this Act it must be exceedingly difficult to get the evidence which is necessary to prove under section 15 (2) (a) that one of these dangerous associations comes within its purview. In effect, therefore, the Bill sets out to deprive the executive of a power which at certain critical times—I will not put it higher than that—at certain critical times has been found to be an essential means of preserving order. On what grounds, Sir, is it proposed, against the strong protest of the responsible Government, to take away these powers? In the first place reference is made to the authority of the Repressive Laws Committee. There has been some difference of opinion between my Honourable friend, the Mover and the Honourable Sir Maneckji Dadabhoj as to the precise terms in which the Repressive Laws Committee dealt with the matter. Well, Sir, I have looked up the Report and I think the difference between my two Honourable friends can be explained in this way. In one passage of the report it was said that many of the signatories hoped that it might be possible to repeal the Act at an early date. Well, Sir, I should conclude that the Repressive Laws Committee like many other Committees before and since, spoke to some extent with two voices. When it said that many of them hoped that the Act would be repealed at any early date, I think it is clear inference that the remainder of them did not hope for that.

And when we come to the substantive recommendation, to which all the Members subscribed, it is this :

"But we advise that the repeal of the Prevention of Seditious Meetings Act, 1911, and Part II of the Indian Criminal Law Amendment Act, 1908, should be deferred for the present. Their retention is necessary in view of recent occurrences and possible developments, which we cannot but regard with the gravest apprehension".

That is their final recommendation.

Then, Sir, it is suggested—I am not sure if my Honourable friend the Mover actually made that point—but it has been suggested several times that the presence of this Act on the Statute-book is in some way a slur or reflection

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on the country. Surely it is taking too sensitive a view of the position to hold that the existence of an Act which is not being used is a slur on the country. After all, I would ask my friends to remember that the vast majority of the people of this country do not possess such an intimate knowledge of the law, as to know what is or what is not on the Statute-book, and they have not, in all probability, the smallest idea that this Act exists. The Act is a reserve power. We do not want to use it at the present moment, and I do not think it is reasonable to suggest that it should be repealed merely on grounds of that nature. But the main argument, as I understand, which my Honourable friends opposite advance, is that the situation is now so quiet that there is really no need to keep the Act. And my honourable friend Mr. Natesan made an appeal somewhat on those lines, that the atmosphere at present is quiet and friendly. Well, Sir, I should be very sorry to seem unsympathetic to such an appeal. But I wish to make it plain that it is not a question of the present atmosphere. Our case is not that at the present moment we are contemplating the use of this Act; our case is a different one. It is that if trouble were to occur—and who, Sir, can guarantee that it will not occur—it is most important not to have to wait until a situation has developed which will persuade a naturally reluctant Legislature to grant powers to stop such trouble. I think that point was put extremely well by the very Committee to which my Honourable friends refer so frequently, the Repressive Laws Committee. They said :

“Further, an obvious objection to a more complete acceptance of this principle ”

—they were talking of the principle of repeal,—

“is that in allowing proof of the necessity for legislation to accumulate, even stronger measures than those now under consideration might eventually be required for the suppression of disorder. By the time public opinion had become sufficiently alarmed to demand or approve legislative action, the damage might be irretrievable.”

That, Sir, seems to me to be an incontestable position. We know that the Legislature would naturally and properly be reluctant to re-introduce these measures once they have been repealed. We should have to get together an overwhelming case to put before the Legislature before we could hope, I am afraid, to convince my honourable friends opposite of the necessity of action.

Now, Sir, I can understand those who say that the powers conferred by this Act are of such a nature, that they are so revolting to my Honourable friend's instincts that they should never be granted under any circumstances. But I find it difficult to understand those who admit that under certain circumstances they may be required and yet want to repeal the Act now. It is like a man who in the hot weather under a cloudless sky throws away his waterproof, a very imprudent thing to do in a climate like Simla. That is an imprudence which an individual would not commit. But it is precisely that imprudence which some Honourable Members ask Government to commit in carrying through this Bill. A very good illustration of what I mean is to be found in the speech made by Sir Alexander Muddiman in this Council when the same issue was before it in February 1925. The position then was much the same ; a Bill had

been passed by the Legislative Assembly, and it was being considered by this Council, and this is what Sir Alexander Muddiman said :

" When the Legislative Assembly was discussing this Bill, almost simultaneously there had arisen in a remote part of the Indian Empire a condition of things which made it necessary for the Local Government almost at that very moment to put this Act, which is very rarely used into force. A dangerous movement characterised by intimidation and boycott suddenly arose in certain districts in Burma, and the Government of His Excellency Sir Harcourt Butler, a Government which, I think, all those who know the head of it will agree, is not likely to act rashly, felt it necessary to use these very powers. It happened almost at the same time that the Assembly was saying that it was unnecessary to retain the Act, that the Government should not have these powers, that they are not good against anarchists, and there was no other use for them ; and a few days later the need arises and the power was wanted in Burma ".

That, Sir, I think, puts very clearly my point.

Well, Sir, what are the circumstances for which this Act is required, for it is admitted that this is an Act which is only required to be used very rarely ? Though those circumstances do not often arise, yet when they do arise, they are extremely dangerous, and it strikes me that the position which this Act is designed to meet is apt to recur. I was very much struck when I was looking through the old papers with the extraordinary similarity of the conditions to meet which this Act was enacted in 1908 and the conditions which subsequently confronted Government in the years 1921 and 1922, and I hope I shall not weary the Council unnecessarily if I just read out two passages which suggest this very marked similarity. This is what Sir Harvey Adamson said when introducing the Criminal Law Amendment Bill in 1908. He said :

"The information which we are constantly receiving from districts places it beyond doubt that the majority of these associations are maintained with the object of training youths in the use of arms and fitting them to take part in a general revolution that is hoped for. Outwardly professing to be devoted to such laudable objects as keeping order at meetings and helping pilgrims at festivals, they have been largely used for the forcible boycott of foreign goods, and for terrorising the community. The members often claim to travel free, and they have not hesitated to assault officers of steamer and railway companies who have refused them accommodation. In many cases such officers either from sympathy or from fear have refrained from enforcing payment of fares. They practise drill, engage in sham fights and parades, and encourage a martial spirit with an ultimate object which there is little attempt to conceal. These *samitis* have exercised a demoralising effect on the youth of the country, causing them to neglect education and to set at naught the authority of parents, until gradually the heads of the *samitis* have assumed complete control over the boys."

Well, now, compare that which was spoken in 1908 with the position described in the Report of this Committee, to which we rightly attach so much authority, the Repressive Laws Committee. This is their description of affairs in 1921. They say :

" Recently in Delhi it has been necessary to declare certain associations of volunteers unlawful under section 16 of the Act."

(the section which my Honourable friend wishes to repeal).

" We have carefully examined the circumstances which led to this action. The volunteer movement began with social service, but the adherents soon developed a definite tendency to interfere with the duties of the police and the liberty of the public. They then began to intimidate and terrorise the general body of the population. There was a tendency towards hooliganism. It has been proved that some of these associations



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resorted to violence, that their behaviour at railway stations and public meetings was objectionable and rowdy, that they obstructed the funeral of an honoured citizen and held a most undesirable demonstration at the house of another. They actively interfered with the elections by threats and picketting. There was every reason to believe that their activities, if left unchecked, would lead to serious disorder. The conclusion we have arrived at is that some of these volunteer associations in Delhi were seditious organisations, formed for the purpose of intimidating loyal citizens, and interfering illegally with the administration of the province."

Well, Sir, those are the circumstances to meet which this Act has on rare occasions to be employed. It is difficult to say that those conditions can be met by any means less drastic than those conferred by the Act. I suggest, Sir, that it would be throwing away the teachings of experience, if Government were now to part with those powers. Though the particular power given by this Act may be somewhat shocking to some of my Honourable friends, in that it is not open to the court to consider whether an association is or is not an unlawful one, at the same time the essential object of the Act is preventive and in its operation it is really much more mild than the measures which might have to be applied if this Act were not in force. When the Act was introduced this was emphasised and later when the Repressive Laws Committee went into the point, they also declared that one of the main objects of this Act was preventive. The Act is intended to detach those who are not really guilty, those who are carried away by their temporary emotions, to detach them from the dangers of an illegal movement. In actual operation, Sir, I claim that this Act is not very severe. My Honourable friend has also talked as if the Local Government would exercise its powers to declare associations unlawful in a purely arbitrary manner. He talked, I think, of "executive whim." Well, Sir, section 16 of the Act lays down that the Local Government must be of opinion that the association interferes or has for its object interference with the administration of the law or with the maintenance of law and order or that it constitutes a danger to the public peace. No Local Government, Sir, will come to any such conclusion without the most careful reflection and a full sense of its responsibility, and I do not think that my Honourable friends are able to point to a single instance in which a declaration has been made which the circumstances have really not justified. The Act has been employed very sparingly and when it has been employed its employment has been fully justified.

I need say no more on the main provisions of the Bill, which as I have already shown, are designed to take the substance out of Part II of the Criminal Law Amendment Act. But I must say a word about clause 4. When I first read clause 4 it came upon me with rather a shock of surprise. To my untutored mind, it did not seem to have any connection with the clauses that preceded it. My Honourable friend the Mover has explained why this somewhat unusual method of drafting was adopted. He has suggested that because the Government of India produce from time to time omnibus Bills for repealing and amending a number of uncontroversial measures, therefore it is justifiable to combine in one Bill these two exceedingly controversial and apparently unconnected proposals. The only connection which really appears to exist between them is that their common object is to weaken the hands of Government. I do not know whether that is a sufficient reason for combining them in one Bill. But there is some danger that this clause 4 may slip through without proper

consideration. The object of the clause clearly is to render ineffective the very important powers possessed by the Government under Bengal Regulation III and the corresponding Madras and Bombay Regulations. The object of giving these powers to the High Court is presumably that the High Court should summon persons dealt with under these Regulations before them and call upon the executive Government to prove their reasons for keeping them in detention. Well, if the executive Government were in a position to do that, they would not be making use of these Regulations. Therefore in effect, this clause 4 is intended to render the provisions of Bengal Regulation III and other Regulations entirely ineffective. My Honourable friend is apparently not satisfied with taking away powers because they are not at the moment being used. He now proposes to take away powers because they are being used. For, as Honourable members are well aware, we are using our powers under some of these Regulations. I do not wish to say anything more about Bengal Regulation III which we were discussing in this Council a few days ago. But, Sir, somewhat extensive use has had to be made of the similar Madras Regulation, after the Malabar rebellion, and I have not yet heard any substantial criticism of the use which the Madras Government thought fit to make in those very special and exceptional circumstances of the powers conferred by Madras Regulation II. If this clause 4 goes through, then a considerable number of persons held at present under the Madras Regulation II will be able to apply to the High Court. I do not know what the result will be; possibly the result will be that they will be set at liberty with serious results to the peace and order of that Presidency.

Again, Sir, my Honourable friend takes some credit to himself for permitting the executive Government still to employ those powers in respect of those who are not British subjects, and his object, as I understand it, was that we should not be deprived of any weapon which it may be necessary to use in fighting the insidious menace of communistic organisations outside India. Well, Sir, I do not think my Honourable friend can be fully acquainted with the methods which these organisations use. They do not generally send emissaries to India who are foreign subjects. Their methods are more subtle than that. They try to get hold of Indians to train them abroad in these special methods of propaganda and then to send them back to India to spread the poison here. Against those men these powers in clause 4 would be totally useless. I suggest, Sir, that this clause 4 is an ill-considered and irresponsible provision which has been tacked on to the Bill with no serious attempt to justify it.

In conclusion I would once more emphasise that the question before this Council is substantially the same as the question which was before the Council in February 1925 when they were asked to repeal Part II of the Criminal Law Amendment Act and when by a considerable majority they refused to do so. I would appeal to the Council to consider its responsibility in this matter and not to take away from the executive Government powers which after due deliberation they hold are still required.

**THE HONOURABLE MR. G. S. KHAPARDE** (Berar Representative): Sir, I wish to support this motion on five distinct grounds and I will go through them one by one. The first ground which I wish to urge is that it is only a matter of common courtesy that when the other House has passed a Bill with a large and overwhelming majority we should take it into consideration here.

[Mr. G. S. Khapardé.]

It is not for considering the details of the Bill nor the provisions of the Bill, but the provisions and details have been spoken to and therefore I cannot omit them. But my first ground is that it is merely a matter of common courtesy to take the details of the Bill into consideration. Why I say it is this. From the speeches that I have heard all the details get put together and one after the other they are being argued by a reference to authorities, by quotations and by reasons. Would it not be better that each detail was taken under its proper head, and then considered, argued and resolved upon. My first argument is that this Bill, as has been pointed out by many Honourable Members, is getting to be something in the nature of a hardy annual. It comes up over and over again and, as the other House passes it, we reject it, and that is the history of it. Well that is not good. We should, really speaking, try to understand the point of view from which the other House always passes it, and I have been taxing my mind to see what I could make out of it and I have made it out this way, that this Bill—not this Bill but the Act which it seeks to repeal—goes against the fundamentals of all jurisprudence of which I am aware. In the old Hindu law and in the whole of Hindu jurisprudence the principle is that the judiciary or the judicial courts merely pronounce a man to be guilty or not guilty. They merely return a verdict whether the man is guilty or not. Then it is for the Crown to award the punishment: that was the function of the Crown, of the King himself. The King used to sit down and get the Chief Justice to sit with him. The King would say “Your court has held this man guilty. What do you think I should give him by way of punishment?” and between them, the King and the Chief Justice would decide what punishment was to be awarded. Now this Bill really goes exactly the opposite way. It does it in this peculiar way, that the Local Government which represents the King should determine what assembly or what group of persons or what activity is unlawful, and then they make a declaration to that effect, which cannot be regarded as evidence in court. It is worse than an estoppel; it goes much further. You call upon a man “Were you a member of this assembly?” Every assembly keeps a register. There is the book and the accounts. Then you hand him over to the judiciary to give the punishment. That is exactly the opposite of what was done under the old Hindu law. The man may say to the Court “I am a member but the assembly is not unlawful.” The Court says “We have nothing to do with that; the Local Government has said it is.” All that remains is to award punishment. The joke of it is that you can go up to the High Court and say that the assembly, or the group of which you are a member was not unlawful. While on this subject I may say there is a judgment of Sir Lawrence Jenkins which is very illuminating but unfortunately I could not get hold of it to-day. I may be convicted by a Magistrate and given six months, one year or two years. I go to the Chief Justice and say “I am a member of that assembly but that assembly is not unlawful.” He says “What is the evidence on the record to show that this assembly is not unlawful.” There is not a word on the record except the notification of Government. So this right of appeal which the Act gives is a joke and a cruel joke at that. It reminds me of a play in Shakespeare where a man is trying to tame his wife. He professes to take great care of her and looks specially after her diet. He refuses all kinds of food that is

offered and he then takes a small bit of dry bread and says " This is good for you, it is nutritious food " and the husband offers her that food and ultimately starves her into submission. That is what it is. You say you have got a right of appeal. It is a joke. The lawyers cannot speak about anything which is not on the record and the law court can decide anything only on the evidence which is on record. There is nothing to go on except the notification of the Local Government that the assembly is an unlawful assembly and the fact that the man is a member of that assembly. And this is called the right of appeal! It is a cruelty and ought not to be there. That is not what is done in English jurisprudence. There is the jury and there is the judge. The jury pronounces a man guilty or not, and the judge, representing the Government, awards the punishment. In this case, on the contrary, it is the Crown that pronounces a man guilty and the court has to award the punishment. That is against the whole idea of jurisprudence so far as I have understood it, and therefore it is that the other House takes up this question over and over again and it is sent to us here over and over again. And unfortunately what has happened in the past, though I hope it will not happen now is that we reject it summarily. Well, that is not the way to deal with it. Therefore I submit that this motion should be allowed and all the details of the Bill taken into consideration. The details can be argued later and if necessary amendments may be moved ; if the Government desire any undesirable portion of the Bill to be altered it can move amendments to that effect and the whole matter can be settled in that way.

The third ground is that really speaking the Act which we seek to repeal proceeds on a wrong basis, and unfortunately it

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has been supported also on a wrong basis. What are the bases that are given? It has been said that evidence cannot be put into Court because it will go out and it would be very unpleasant and it would not be right that all people should know of it ; it has also been said that the witnesses will be terrorised, and so on. I submit that this is a wrong excuse, because there is such a thing as trial in camera and you could hear cases of this kind after excluding the public and the newspapers ; you could order the newspapers not to publish the details of it and in that way the mischief could be counteracted as it is being done in courts in England ; there they say that divorce cases contain very many unsavoury details that ought not to be published. The Government could easily order the newspapers not to publish details of these trials and they could hold these trials in camera and all the evil effects of publicity could be eliminated. As to the argument of the witnesses being terrorised, I cannot understand that argument, except on the ground that the Government are unable to counteract the terror that is inspired by private individuals. I do not accept that proposition. After all, whatever the society, and however strong a group may be, it still cannot exercise greater influence than the executive Government itself with all its army of informers, its police and its disciplined army behind it. Do you think that private individuals will succeed when brought face to face with things of this kind ? They cannot. It appears to me, therefore, that this excuse is a very flimsy one ; they are not excuses that will hold or can stand anything like an examination.

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Let us proceed further. The Government say, "These are not the powers that we want to-day." It has been just now said by my Honourable friend over there. He compared the situation to a man who while walking in the sun threw away his waterproof and then the rain came on and he was thoroughly drenched. This provision, then, exists for the future. With the past we do not want to interfere because what has happened has happened; whether those circumstances necessitated the use of the law or did not necessitate its use I am not going to judge now; the Act was passed then and it was there. Objection to its repeal is taken on the ground that the Act has never been abused. I do not like the word "abuse", because it implies some intention and a wilful desire to go wrong. I do not use the word "abuse", but if it is said that no mistaken use of it was made, then I contradict that proposition. Mistaken use of it was made and I need not mention names, but people who are now Honourable Members of the other House were taken up and sent to jail. There was one person, whose name also I do not like to mention, who narrowly escaped being put into prison, who became soon afterwards an Honourable Member of the Executive Council of His Excellency the Viceroy and has since been given titles and made much of. So, mistaken use of this Act was made and mistakes there have been and probably admitted to be, because some of these persons were afterwards put on Committees like the Skeen Committee and most important work was entrusted to them. The Act may not have been abused in the sense of being wilfully perverted for all purposes; but I do maintain that mistakes were made and very serious mistakes too. The argument therefore that it has not been abused or not often used is a funny argument. If it has not been often used, why do you want to keep it for the future in the lumber room to be brought up rusty on some occasion and brushed up and brought into use? If it is not required now, why do you keep it on the plea that it will be required later on? Government certainly has got so many powers under the Conspiracy Act and other Acts and they can always convene this Legislature and get an Act passed when the occasion arises. After all we are responsible beings and if such a thing does happen and there is a dangerous situation and this Act is required, I will certainly vote if I am living then and if I am in this Council, that the Act be passed at once. I am not therefore disposed to attach any importance at all to these little excuses that have been put forward. What I attach importance to is the papers and authorities that have been cited up to this time, that a law of this kind which goes against the main principles of jurisprudence ought not to be on the permanent Statute-book. If necessity requires—and I do not pretend to know about the future—that an Act of this kind should be passed, it could be brought in as an exceptional thing and again turned out as soon as the necessity for it had gone. In this respect we should imitate, I think, what the surgeons do; they cut out the flesh when they perform an operation and they take very great care that they do not cut off even one-hundredth of an inch more than is necessary; and as soon as the operation is over they apply medicines to fill up the wound and to have the flesh that has been cut out replaced by healthy flesh. If there was this unfortunate necessity in 1908 and Government had to get this law, then the next duty of the Government is to try and wipe out that law and let the good flesh grow. You do not open the wound every now

and then to examine whether the healthy flesh is growing ; if you do that, it will resemble the case of the monkey which opened its wound every time to see if it was all right and in the end the wound became a festering sore and the monkey died. Let not the Government open these things at every point and try to see whether the healthy flesh is growing or not. Take it that it is growing ; take it that the thing is doing its work, that good government is doing its work ; people are starting unity movements and such things and they are trying to improve the laws ; they are trying to improve the constitution and so on ; these healthy signs should be taken note of and I think a law of this kind, of such an exceptional nature, is liable to be misused—I do not say abused ; but people will make mistakes and you could not punish them afterwards for making mistakes. The mistakes will have been made. This should be avoided as far as possible. No excuse should be left for a mistake of this kind being made, specially against the liberties of the people.

It has been said that this Bill combines two inconsistent things together—the right of appeal to the High Court and the right of the writ of *habeas corpus* ; and my friend sitting to my left argued the matter. It was also argued in the other House and has been argued to-day at great length. It has been asked what is the nexus, what is the common portion of it ? Honourable Members will probably remember that a few days ago we passed what my friends called an omnibus Act, by which we repealed a large number of superfluous and meaningless laws. What was the nexus in that connection ? What was the common point ? The common point was that it was said that all these laws were useless or superseded by other laws. Very good. The nexus here is the individual liberty, the safety of person, the safety of his respectability—that is the common portion in this question of *habeas corpus* as also the Act of 1908. That common thing being there I think the Bill rightly puts these things together. They are connected with the personal liberty of the subject and as such they could be brought in together and they certainly can be dealt with together. This *habeas corpus* is an old right, and a right of great importance. I do not mean to speak much about it now ; lawyers know all about it—that it was devised in order that people who were languishing in jails under arbitrary orders and never had an opportunity of coming out, could be brought up before the High Court in order that the Judges might go into their case and might say that the persons ought to be released or dealt with according to law. It is a thing which has been done to prevent the executive from putting into jail without trial any man whom they disliked and who will be languishing there. For this the right of *habeas corpus* came in. I do not want to enter into the legal details of the matters nor the technicalities connected with it ; but the fact is that we like the *habeas corpus* because it was originally devised to protect individual liberty and it is brought in here because it protects individual liberty. They said that it was too wide, and you include in it people who are not British Indians and so on. Very well, then, whoever drafted this Bill, was wise in excluding non-British subjects, and was right in laying down that Indian subjects alone should be included in it, and the others left out. Now, what is wrong in this ? In fact, if I could I would adopt one phrase from the Roman law. The Romans are proud of their country, and they say “I am a Roman citizen.” You see with what great force the claims of the Romans have been urged in Julius Cæsar. I want to raise the status of

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Indians in such a manner that we shall say "We are British subjects; therefore, nobody can arrest us without a process of law; nobody dare touch us without our being taken to court; nobody shall molest us until we have a remedy against them." I would like to have something of that kind, Sir. Therefore, I say with all the little strength that I possess that the proud status or our being citizens of the British Empire should be maintained intact, and no British subject should be liable to be arrested without the sanction of a court or without the process of law. For these reasons, I strongly support the motion brought forward by my Honourable friend.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I am afraid I cannot subscribe to the rather ingenious argument put forward by the previous speaker that because this Bill or any other Bill is passed in the other place, we should agree to a motion that it should be taken into consideration in this House out of courtesy. The motion for consideration is merely a phraseology, and I do not think that in connection with this Bill the Legislative Assembly can with fairness accuse this House of not having considered it. We had a pretty considerable debate on this measure last Monday. We have had some very interesting speeches to-day, and, as I have said before, the Council of State cannot fairly be accused of want of courtesy by the other House if we do not vote for the motion to take into consideration the measure which they have passed.

Now, Sir, I am not a lawyer, and I want to explain to the House my position in regard to this Bill. I have listened with great interest to the speech of my Honourable friend Mr. Ramadas Pantulu, and also to that of my Honourable friend Mr. Natesan. I have also listened with great interest to the speech of the Honourable Mr. Haig representing Government, and now the non-lawyers of this House have to come to a decision as to who is right. Now, Sir, the Honourable Mr. Ramadas Pantulu and the Honourable Mr. Natesan may be entirely right in their view that Part II of the Indian Criminal Law Amendment Act, 1908, should be repealed, in so far as their view affects Madras. My Honourable friend Sir Manmohandas Ramji might easily get up and put forward the view that, so far as Bombay is concerned, Part II of the Criminal Law Amendment Act should be repealed. Perhaps there is a good deal to be said for both those points of view, but I prefer to accept the view of the centre, that is the Government of India. I cannot imagine that my Honourable friends on my right know with any degree of certainty what is going on in other provinces, nor could I who come from Bombay pretend to have a knowledge as to what undercurrents may be spreading through the Punjab, the United Provinces or Bengal or Burma. Therefore, Sir, as an impartial listener to this debate, I feel that I must rely upon the view of the Central Government. My friends on my right say that this Act is not required, while the Government says it is required; surely, the Government, especially the Home Department, who must have an intimate knowledge of what is going on beneath the surface in this great country, are in a better position to decide this important matter than those who are outside the pale of the Home Department and merely give the views of the particular provinces from which they come.

The Honourable Mr. Natesan challenged the remarks I think, of Sir Maneckjee Dadabhoy, that it was unfair to call upon the Mover of this Bill to quote instances where Government had put into operation Part II of the Criminal Law Amendment Act with harshness. I cannot see the point of view of my Honourable friend Mr. Natesan. When a member gets up and says that a certain measure is harsh, surely it is not unreasonable to be called upon to cite instances. It is very easy to make wide sweeping statements, but surely such sweeping statements must be supported by facts.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras Non-Muhammadan): We are precluded from challenging the executive action in the courts. How can we adduce any instances of the misuse of its powers by the executive?

THE HONOURABLE SIR ARTHUR FROOM: As I said, I am quite ready to listen to the Madras point of view. But I contend that it is not the point of view of the whole of India.

Then again it was suggested that the time is now ripe for the repeal of Part II of the Criminal Law Amendment Act. Government have undertaken that when they consider that the time is ripe for the repeal of this Act, it will be repealed. Again I must put my faith in the Home Department of the Government as the best judges to decide as to whether the time has arrived for repealing this Act. And without altogether putting my faith in the Government blindly, I do not know how any Honourable Member of this House, as he picks up his daily newspaper and reads of anarchists here and anarchists there, of certain meetings that take place resulting in loss of life, could argue that the time has arrived for the repeal of Part II of the Criminal Law Amendment Act of 1908.

THE HONOURABLE SIR SANKARAN NAIR (Madras : Non-Muhammadan): Sir, my observations will be very brief on this motion. First, I shall address myself to the last clause of the Bill dealing with the writ of *habeas corpus* and then deal with the more important question which arises in connection with the other clauses. Now, with regard to the clause relating to the *habeas corpus*, the Government is speaking with two voices, because in the other place the Honourable the Home Member said that he did not propose to take up that question and deal with it at all. His point was that it was so disconnected with the rest of the Bill that it ought not to find a place in the Bill at all, and therefore he said he would not deal with it. His words are:

"My reason in not dealing with it is firstly that I have already detained the House for a somewhat longer period, and I do not wish to detain it unduly; and secondly, that this question of *habeas corpus* is so lacking in anything that is connected with the other matter contained in the Bill that it is impossible for us now to debate it effectively. It is a separate issue altogether, and therefore I do not propose to enter upon it".

That was the basis on which he dealt with the question in the other House.

There was no justification on the merits and he left it at that. I should have thought that that is rather unfair towards this Council, because if that power is to be vested in anybody at all, it must be in you only and not in any Member of the Council. Here an attempt has been made to justify the provision by saying that the Government cannot choose to subject themselves to the jurisdiction of the High Court and their decision under any one of these Regulations



[Sir Sankaran Nair.]

must be final. I shall have to speak more in detail when I deal with the other question about the advisability of taking the opinion of the High Courts on these larger questions, but at present I will only say this that wherever a local court has no jurisdiction to issue a writ of *habeas corpus*, the High Court of England has, and if any one of the persons against whom an order is passed under any one of these Regulations has money enough or influence enough to go to the King's Bench Division of England and ask the High Court Judge there to issue a writ of *habeas corpus*, it would be no answer to that demand that the man is detained under anyone of these Regulations. The High Court is entitled to call for the papers to see whether the man was justifiably detained, because it is the inherent right of every man to resort to that court and you cannot take away the jurisdiction of that court. If a local court has jurisdiction to issue a writ of *habeas corpus*, then the High Court of England will not issue one. But where the local court has no jurisdiction to issue a writ of *habeas corpus*, then the High Court of England would issue it. It is only those people who have enough money that can go to the High Court, those who have no money could not go to the High Court. Is it not, then, fair on the part of the Government not to compel them to undergo this heavy expenditure, but give them all the facilities here which they would otherwise have had if they went to England?

Now, I come to the other question. I do not know whether it was omission or forgetfulness on the part of the Honourable Member who spoke on behalf of the Government, or whether it was my own carelessness but, I did not hear a word on the question as to the right of appeal from orders which may be passed by Government. So far as I am concerned, the whole thing hinges upon this.

THE HONOURABLE MR. H. G. HAIG: I do not think, Sir, that arises in this Bill.

THE HONOURABLE SIR SANKARAN NAIR: To me the whole thing depends on that. The Honourable Member says it does not arise. I shall show him how it arises. Government have got the power under the existing law to declare any association illegal if the association is of a certain character. We seek for the abolition of this power. The main reason for the abolition of that power is, in my opinion, that it is a power vested in the executive not subject to the control of civil courts. It must be open to the party to go to the High Court in order to impeach the order passed by the Local Government or the Executive Government declaring an association illegal. Speaking for myself, I would not mind leaving that power in the hands of the Government in that case. The Government may have that power.

THE HONOURABLE MR. H. G. HAIG: The Bill takes away that power from the Government.

THE HONOURABLE SIR SANKARAN NAIR: It takes away the unrestricted power to issue orders not subject to the jurisdiction of the High Court. I will explain it further. The Honourable Member says: "We must have the power." Very well. I say, you may have the power; but if you pass an order under the section declaring or notifying that a certain association is unlawful, then give the right of appeal to the High Court where the party or the associa-

tion aggrieved can show that the association is not unlawful. I will exemplify it. There are many people in this country and there are some Members in this House who are willing to trust the Government to any extent and say that they would leave the power entirely in the hands of Government to do anything they like in this respect, that is to say, the Government might declare any Association illegal and they are willing to believe that the Government's orders are absolutely justifiable in the circumstances of the case. To them I have nothing to say. But I take it that the Government are satisfied that the majority of the people of this country do not accept the bare opinion of the executive Government as sufficient to deprive a person of his liberty. From one end of the country to the other you will find that intelligent men are not willing to accept this view of the Government that interferes with the liberty of the subject on their sole opinion. There is also another class of people who think that every thing that the Government does is absolutely unjustifiable even though the civil courts may declare such action of the Government to be lawful and justifiable in law. But at present they do not form a considerable section. Speaking generally, the great majority of people in the country would be satisfied if an executive order of the Government is upheld by a civil court. In that case they would accept the order as one which might or ought to have been passed.

Let me now refer to the examples given by the Honourable Members here and in the other place too. In the other place it was stated that in the United Provinces, there was a declaration under this Act that certain Congress Associations were illegal and we all know that many people were sentenced to months of imprisonment. Associations were declared illegal, but what was the result of that? It increased the bitterness in the country, it widened the gulf between the people and the Government. Some of the most eminent men, who are held in the highest esteem and who now lead the most powerful party in another place, were punished under this Act. Their associations were declared illegal, with the consequences disastrous and injurious to the good government of the country in the sense that it made them hostile to Government in every respect. What was its effect elsewhere in India. Everybody felt that men of character and men of standing in the country should not be sent to jail by Government on mere one-sided representations, because after all the information that Government gets is one-sided only.

Now, take the other aspect of the case. Supposing they had an opportunity to go before the High Court and say: "We have been declared to belong to an association, that is the non-co-operation movement, which is declared illegal. Now we want the High Court to say whether that association is legal or illegal". We know as a matter of fact that during the Punjab trials the Government came forward with the plea that the non-co-operation movement was an illegal one. But on account of an unfortunate word used by Mr. Montagu in Parliament the plea was dropped and that part of the case was not gone into and there was no decision by the Courts in the Punjab whether the non-co-operation movement was a legal or illegal one.

But supposing the High Court in the United Provinces had gone into the question and come to the conclusion that the non-co-operation movement was an illegal one which led to disorders in Malabar and when the Prince landed in Bombay, and in Chauri Chaura—supposing, I say, the High Court held that the non-co-operation movement was an illegal one,

[Sir Sankaran Nair.]

what would have been the result throughout the country? Peaceful men who were inclined to follow the law laid down by the ordinary courts—and they form the majority—would have said “The High Courts have declared this movement an illegal one; I shall not be a party to it; I will not join it”. But what has been the actual result. When they heard that the non-co-operation movement, at the head of which were men like those men whom we know,—when they saw that the Government were acting against them and not venturing to go into a court of law, they were very much dissatisfied. There were men who had the interests of the country at heart who said “Well, we will join the movement”. Repression in such instances always strengthens a movement. I say therefore it is in the interests of the Government that in all these cases there should be a decision by a court of law whose opinion will be respected. The recent decision of the Allahabad High Court, the judgment of the Chief Justice, has done far more to rally the ordinary people than any executive orders that might have been issued by the Government. His decision, or rather the decision of the High Court, that there was a widespread conspiracy commended itself to lots of people who said “If the Sessions Judge after such a careful enquiry has come to that conclusion and that conclusion is confirmed by the High Court, we have to believe it. At any rate, we cannot blame the Government for acting upon it.” I say that is the case throughout. Therefore it is in the interests of Government themselves that they should allow a man who is so inclined to challenge the order of the Executive Government in a court of law; otherwise they would say “We shall not allow this autocratic Government to have its way with us, and therefore any attempt at repression must be met by resistance”.

Then again are these questions to be decided by the Executive Government as to whether the non-co-operation campaign, the associations that carry on non-co-operation, are illegal or legal. Is that a thing to be settled by executive order? No, take another instance that has been referred to by the Honourable Member, that is, the association which was formed at Delhi, which started as a social service association, which developed into an association which it is said interfered with the duties of the police and were picketing. Are these questions to be settled by the Executive Council? I know of cases of picketing where villagers formed associations to prohibit drink in their village. The Government grant licenses to certain individuals who go there and open liquor shops; the villagers gather round the toddy shop and say to anyone who is going there “Don’t go there!”. That was regarded by the executive authorities as picketing though there was no threat or intimidation. That is one instance of picketing that has come to my knowledge. There are many instances in English courts which range from merely mild persuasion on the one side to threats on the other side. It is, then, as I say, one of the most difficult questions to decide and I say it is not a question to be decided solely and finally by the Executive Government. It is a question which should finally be submitted to the civil courts. Take again the other case—interference with the police. Well, the Honourable Member himself read one of those passages. Men have been hauled up because associations had been formed both in the Madras Presidency and the Bombay Presidency to assist helpless passengers at temple festivals, etc. The policemen at some places did not like it; they prevented the men from

doing that sort of thing and they said it was an interference with the duties of the police. If the Government want to carry the people with them in the administration of all these repressive measures, the only way to do it is to tell them "Here we want this power; we have exercised this power, and if you think that is wrong, go to the High Court". Do not give the power to the local courts, if you do not like it but to the High Court. It is said the witnesses will be terrified. Well, it is not only the Crown witnesses who are terrified, but also the witnesses of the accused. The one is quite as real as the other. I say therefore and I maintain it that if you want this co-operation between the Government and the people you must give the power of appeal; otherwise there should be no power to declare an association as illegal. I submit, therefore, that it is perfectly right to omit section 16. And after all I submit to the Council that section 2A which the Honourable Member declared as a useless section will meet all the purposes which the Government wants. That section says:

"Unlawful association means an association which is entered into by persons to commit acts of violence or intimidation".

The Honourable Member said you cannot give evidence of intended violence but all these acts in Malabar, Bombay, Chauri Chaura show that you could have proved it. How can it be said then that it is a useless section? I submit that that section meets all those cases where any violence is to be expected. It is only the other cases, where no violence is to be expected, that are dealt with in the other section which is to be repealed. I do not wish to trouble the Council on this matter any further.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: (East Bengal: Non-Muhammadan): I rise to support the Bill now before the House. The Criminal Law Amendment Act was passed in the year 1908 to repress the so-called Anushilan Samitis which were started through almost every district of Bengal. They were perfectly honest Associations organised for the purpose of self-defence and safeguarding the civil rights of the Hindus against the Muhammadans after the breaking out of the Jamalpur riots. When the boycott movement was adopted for the reversal of the partition of Bengal, these associations openly and peacefully picketed the markets of Bengal; this roused the ire of the Government against them. The Honourable the Home Secretary has himself quoted the other acts they were doing; they were travelling without tickets and doing such other things. Were these acts so very serious as could not be handled under the ordinary law of the country?

• Yet this law was enacted to suppress them in spite of the earnest protest of the public from every quarter. The result was that this open movement was driven underground and brought in the anarchical movement in its train. This law then failed to suppress the movement and other methods had to be adopted for the suppression of anarchy in the country. This law remained a dead letter for a long time. Then came the non-co-operation movement. It was under the leadership of Mahatma Gandhi, a perfectly non-violent movement; but unfortunately for the people and I should venture to submit also, for the Government, this unhappy measure was again resorted to to suppress the movement. The result has again, as before, been to drive

[Mr. Kumar Sankar Ray Chaudhury.]

underground what had been an open and perfectly non-violent movement and to transform it into a violent one of anarchical crimes. During the non-co-operation movement this law was so much abused that thousands and thousands of men were put into jail under this Act till the jails of Bengal could hold them no more. Men like Mr. C. R. Das and Pandit Moti Lal Nehru were arrested. Even respectable ladies were not spared. Mr. C. R. Das's sister and wife and another lady also were arrested under this Act. Under section 15 (2) (a) only those associations whose object is to excite men to commit violence or intimidation or who habitually commit these acts are to be deemed unlawful. Applying the principle of *ejusdem generis*, the Government can declare only such associations to be unlawful under clause (b). Was the object of the non-co-operation movement led by Mahatma Gandhi a violent one? The Honourable Sir Maneckji Dadabhoy has referred to the time being not normal. May I ask him what is the meaning of the word? Is it not something that is the usual order of the day? If such a state of things as at present prevails continues as it has continued for about the last 15 or 16 years, I should submit that it is the normal state of things. This state of things, which has almost become normal with us has been brought about by the Government by the persistent operation of statutes like these and until they are repealed, no better conditions can be expected. Moreover what is there that is very abnormal in the country? During the 8 last years I think there have occurred only 11 cases of anarchical crimes in the country and compared to the vastness of the country and the number of cases of ordinary violence in this and other countries can we lay our hands on our hearts and say that the situation in this country is so very bad so far as anarchical crimes are concerned? Reference has been made by the Honourable Mr. Haig to the Bolshevik menace. May I ask him how many cases of Bolshevik conspiracy have cropped up in this country and on how many occasions has this law been resorted to in such cases?

THE HONOURABLE MR. H. G. HAIG: I did not mention it, Sir, in connection with this law. I referred to the Bolshevik menace in connection with clause 4.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY: Previous speakers have already dealt with the absolute negation of all principles of jurisprudence involved in this Act and I do not propose to deal with it any more.

THE HONOURABLE RAI BAHADUR NALININATH SETT (West Bengal: Non-Muhammadian): Sir, I support this Bill to repeal and to amend the criminal laws. It is a very very modest attempt on the part of Sir Hari Singh Gour to introduce a healthy atmosphere in the relationship of the governors and the governed. In spite of the passages extensively quoted by the Honourable Mr. Crerar from the Report of the Repressive Laws Committee in the Assembly debates, I am of opinion that the Government ought to have come forward some years ago with a proposal to repeal the Criminal Law Amendment Act of 1908. The recent ruling of the Calcutta High Court with regard to *habeas corpus* makes it imperative on all public men of India to support the measure of Sir Hari Singh Gour. These are

the only bed rocks upon which any liberty of the subjects can be built, and it needs no discussion to convince any one that they are so. The opposition to obvious propositions of political rights proceeds from two sorts of mentality, one from cupidity of the powers that be in enjoyment of irresponsible discretion, and the other, from the incapacity to stand by the fundamentals of social life wherein reciprocal duties are recognised in every-day affairs of life.

In the Assembly the Honourable Mr. Crerar raised three points against Sir Hari Singh Gour's Bill. First, he threw out a challenge to the supporters to quote any instance of abuse of the powers conferred by the Amending Act of 1908. Disbanding of associations is itself an abuse of power, and if an association as an association is acting illegally in the prosecution of their objects, there is ample provision of the law in the Statute-book to deal with those acts and the men in particular who engage themselves in such acts. The Honourable Mr. Crerar and his supporters forgot that the associations which were or have been disbanded under the Act of 1908 were dealt with on the opinion of the executive authorities and that this opinion was formed on some secret reports. This is the history of the administration of this law and if instances of its abuse have to be proved to the satisfaction of reasonable men, it will require an organised activity like that of the State itself to hunt up the circumstances which produced the perverse mentality leading to the declaration of the unlawful character of the associations concerned. If the Government lays on the table all the papers in connection with the declarations made hitherto, then and then only they can ask us to point out the instances of abuse, otherwise not. Secondly, in the Assembly debate the Honourable the Home Member quoted some instances where the Act of 1908 proved effective. He admitted it to be "a recital of a gloomy tale". I appeal to this House to pause for a few seconds and answer to themselves the few questions I put to them. If only a quarter of a century ago the whole of the British Empire rang with the echo of the outburst of loyal grief over the passing away of that beloved Queen Victoria the Good, who had and have had since then the monopoly of powers for evil and good in the body politic of India? Who had and have disregarded the sound advice of loyal co-operation like the late Mr. Gokhale and the late Sir Rashbehary Ghose who cried themselves hoarse to point out which way lay peace and law and order? Whose jail doors had to be opened to let in persons by tens, by hundreds, and by thousands as years rolled on and on, till the room within could not accommodate all those who were not chargeable with any of the definable offences of the Penal Code, but who had ideas of liberty other than those that were permissible in the opinion of the executive authorities? Is it not a travesty of pleading to say that Chauri Chaura was the culmination that could be traceable to the enrolment of 110,000 volunteers in the United Provinces in 1922? And is it not perversity itself backed up by inefficiency of a funky short-sighted policy to plead for the permanent retention of the Act of 1908 in the Statute-book after this "recital of a gloomy tale"? I know irresponsible power and the straightforwardness to confess a failure are an incompatibility in human nature. Thirdly, it has been pointed out that the provision relating to *habeas corpus* has been unhappily tacked on to the measure repealing the law as to unlawful associations. I deem it

[Mr. Nalinath Seth.]

to be my duty to emphasise the common issue underlying the two principles. The one is the power of the executive to illegalise the liberty of human combination, and the other is the power of the executive to illegalise the liberty of individuals. In both the cases the proposed Bill wants to take away the power to illegalise what is, otherwise legal and legitimate. It does not in any way propose to take away any of the powers of a normal Government nor does it put any fetter in enforcing the responsibilities of that Government. If the exercise of the powers to illegalise the normal activities of the governed either in associations or as individuals simply on the opinion of the executive which cannot bear scrutiny if they are brought out in the light of the day, is a matter of "strong probability in the future," "the solicitude for the liberty of the subject" in the Legislative Hall, sounds as mockery.

Sir, I take this piece of legislation as a return movement to normal conditions. Enough of suspicion and distrust and the gloomy tale of their consistent aftermath! I appeal to this House and the Government to stand erect in the sunny rays of trust and goodwill without which society cannot move an inch. I fervently remind this House that we have already proved ourselves to be sufficiently lagging behind the spirit of the times. To allow men to associate in political activities irrespective of frown and favour of the opinions of the ruling powers respecting the criminal laws of the land and to surcharge the atmosphere with the security and conviction of individual innocence in the light of one's own conscience, is the primary duty of a legislature, and if we fail therein, we fail as a legislative chamber.

This House should remember that the free thinkers of the world are trying to stand up and oppose the invading barbarity of what is known in another country as "Fascism". In this connection let me read to you extracts from a recent appeal by one Mr. Henry Barbusse who is now trying to organise the free thinkers of the world—

"We see everywhere crushed or threatened all the conquest of freedom that had been achieved by centuries of sacrifices and strenuous efforts. Freedom of association, freedom of press, freedom of opinion, and even conscience itself all are persecuted. We can no longer remain silent in the presence of this bankruptcy of progress, \* \* \*

In every country under more or less open forms but more and more audaciously and criminally, everywhere in forms more and more organized every day, a white terror is let loose on the populations and the most sacred principles of individual and collective freedom."

In support of this appeal our poet Rabindranath has written to Mr. Barbusse :

"It is natural to expect in primitive peoples their faith in ceremonies of power-worship dripping with human blood; their awe-struck veneration for the relentless physical force that at first coerces and then fascinates its victims into the abject obedience of slavery. Such a mental attitude only indicates an immaturity of moral consciousness which like the thoughtless cruelty of adolescence can claim a future of growth for its rectification.

But when a similar phenomenon makes its appearance among cultured peoples it proves the second infancy of senility that has lost its control over animal passions. Its greed is not of impulsive youth but of a hardened old age efficiently unscrupulous. Its infection is noxious because while it exhales from its core an unwholesome odour of decay and death its outer skin swells and glows with an exultant flush of rottenness."

With these words, Sir, I support the motion.

**THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN** (North-West Frontier Province : Nominated Non-Official). Sir, I am not a lawyer, and I do not know the subtleties and technicalities of law, but I will express my opinion as a layman about this Habeas Corpus Act. I regret I cannot take the view that has been taken by the Honourable Mover of this Bill. England is a country inhabited by one race, professing one religion whereas in India we have so many races and so many different creeds and religions. India is inhabited by different classes and races of people with different modes of living and different modes of thought. Every section of the people in this country is at variance with the other in the matter of religion and living. The differentiation of castes, creeds and religion is the greatest misfortune of the Indians. This differentiation has given rise to dissensions and bloodshed among different communities at different times, and the entire history of India has got ample evidence of this. This differentiation is responsible for all the dissensions and mischief in the country. All these things mean that the people of India are not yet fully prepared to receive this boon because they cannot live peacefully among themselves yet. Therefore, Sir, I do not think we are yet fit to enjoy this privilege. Instances are not wanting to show that the people of India have sometimes become uncontrollable and since they are unable to control themselves, Government ought to possess the power so as to enable it to bring the people under control when the authorities find it necessary; otherwise there will be feuds and troubles almost every day. I do not think, Sir, that the majority of the inhabitants of this country are in a position to fully appreciate the value of the Habeas Corpus Act, and unless they are able to fully appreciate its value, it would not be wise to grant them this privilege just yet. It would be premature to repeal this section. To my mind, Sir, it would be certainly wise to postpone consideration of the repeal of this Act until the country is a little more peaceful again, because the repeal of the Act will then be better appreciated by all communities than at present. Sir, I oppose this motion in view of the present communal tension.

**THE HONOURABLE MR. V. RAMADAS PANTULU** : Sir, when I left this House on Monday evening, my inclination was to tackle this morning fully, adequately and satisfactorily my Honourable friend Sir Maneckji Dadabhoy. But, Sir, since I went home and reflected more seriously, I thought it would be a fruitless task. I find from the references that he gave to his former speech that he has made considerable progress in the direction of reactionarism since 1925.....

**THE HONOURABLE SIR MANECKJI DADABHOY** (Central Provinces : Nominated Non-Official) : I never made any personal references to my former speech.

**THE HONOURABLE MR. V. RAMADAS PANTULU** : Yesterday he told me that it might have been much better to ask for the repeal of the entire second part of the Criminal Law Amendment Act instead of seeking to mutilate it in this way....

**THE HONOURABLE SIR MANECKJI DADABHOY** : No.

**THE HONOURABLE MR. V. RAMADAS PANTULU** : You said so.



THE HONOURABLE SIR MANECKJI DADABHOY : I said quite a different thing.

THE HONOURABLE MR. V. RAMADAS PANTULU : Then, Sir, I find in February 1925 when a motion for the repeal of the second part of the Criminal Law Amendment Act, was before this House, he said it was better to ask for the repeal of all repressive laws, and when that motion was before this House in September 1925, he voted against it and said that nothing should be repealed.

Therefore, it is merely a question of appealing from Philip the sober to Philip the drunk. I do not think it is any use to argue with my Honourable friend Sir Maneckji Dadabhoy or about him. So I leave him at that.

1 P.M.

With regard to my Honourable friend Mr. Haig, I expected him to deal with two aspects of this question. I may assure him that we on this side of the House are as anxious for the maintenance of peace and order in this country and we also know that the Government is asking for these extraordinary powers ostensibly to protect the life and property of the people of the country. Any power that they want, any measure that they want on the Statute-book vesting them with extraordinary powers is only asked for in the name of the safety of the people of the country. Therefore, when we on this side ask for the repeal of this particular piece of legislation, we do it with a full sense of our responsibility having regard to our own safety and the safety of our own country : Therefore I expected to hear from my Honourable friend Mr. Haig any reason for not repealing this Act, any reason to convince us of the untenability of our position. I wanted him to demonstrate to the House that since 1908, between 1908 and 1927, opportunities have not occurred in this country for the repeal of this legislation, in accordance with the promise held out both by the Repressive Laws Committee and by the Government, and, secondly, that the ordinary laws of the country have not been enough to deal with the situations which the second part of the Criminal Law Amendment Act intended to deal with. These are matters on which I expected my Honourable friend Mr. Haig to convince me. If I were convinced, I would freely admit that the Government was trying to have the powers merely to administer them for the safety of the country ? But I am obliged to say that he has not convinced me on any one of those two points. Since 1908, after the original Act was passed many things have happened in this country and many situations have arisen which made it possible for this Act to have been repealed. On the 11th December 1908 this Bill was passed and it received the assent of the Governor General. On the 17th December 1908, the papers relating to the Minto-Morley Reforms were placed before Parliament and a great deal was made about those reforms both in England and India. They said that the reforms brought peace and order into the country. In the year 1911-12 when Their Majesties the King and Queen visited this country, it was openly given out by the Government that peace and order reigned in this country. The Government said there was peace, contentment and happiness in India. Between 1912 and 1914 nothing serious happened so far as I can see from the facts. In fact in 1913 the Government added some sections to the Indian Penal Code to deal with seditious conspiracies, such other things with which the second part of the Criminal Law Amendment Act was intended to deal, with a view, I take

it, ultimately to repeal that Act. And from 1914 to 1918 the Great War was on and India at that time showed its loyalty because India believed that England's difficulty was India's opportunity to show her good-will to Britain and obtain freedom from her British masters. Nothing was done between 1908 and 1918, though peace and order reigned and though Their Majesties the King and Queen visited India and were welcomed wholeheartedly and loyally by all sections of the population in this country. A decade has passed between 1908 and 1918, not a little finger of the Government was moved to repeal the second part of the Criminal Law Amendment Act. Therefore it is somewhat difficult to believe when my Honourable friend Mr. Haig stated that opportunities had not presented themselves to the Government to repeal this Act and that a suitable atmosphere was not prevalent in the country to repeal the Act, and so on. We all know what happened since 1919 and onwards. My Honourable friend Mr. Natesan referred to the non-co-operation movement and he paid a doubtful compliment to his own section of the province by praising the Andhra country as the most forward and advanced during the days of non-co-operation. I am not ashamed of the part played by my part of the country. Still, I do not think that is a justification for the Government not to repeal this part of the Criminal Law Amendment Act. Then, with regard to the sufficiency of the ordinary law, my submission is that it is quite enough to deal with situations which are contemplated to be dealt with by the Criminal Law Amendment Act. We are not yet told why it is necessary to declare by executive order associations unlawful and to make a declaration conclusive even without recourse to the judiciary by way of appeal. Not a single argument was addressed to this House to convince us that the ordinary provisions of law are not enough. My Honourable friend over and over again challenged us to show instances in which this Act was misused. My Honourable friend Sir Arthur Froom also said that. I have already said it is very difficult to demonstrate that a particular Act was abused when the opportunity to test the action of the Government in law courts is denied by the Act itself. Therefore, such proof as we can give must be based upon public opinion. I have given some instances where public opinion has expressed itself on the misuse of the Act, in the imprisonment of people like Pandit Moti Lal Nehru, Lala Lajpat Rai, Mr. Das and others. I might have mentioned one more instance the other day showing how this Act was misused. I will do so now. I refer to the way in which the Shiromani Gurdwara Parbandhak Committee in the Punjab was declared unlawful under this Act. It was a Committee intended merely for the internal reform of the Sikh shrines, and the religious institutions of the Sikhs. This Act was misused so far as its application to that Committee was concerned. For a long time the monies sent to this Committee were held up by the postal authorities and at the same time we know from the Press that the Government were carrying on negotiations with eminent and respectable members of that body who were either in jail or in dread of jail in the Punjab. My Honourable friend wants instances of the misuse of the Act. I cannot understand what more grave and gross misuses of the Act there can be than the ones I cited before. Therefore it is no use saying that there was no misuse of the Act. There is also no use of my Honourable friend merely saying that the ordinary law of the land was not enough, and secondly that opportunities have not presented themselves for the Government to repeal this obnoxious measure.

[Mr. V. Ramadas Pantulu.]

One word more and I have done. With regard to the *habeas corpus*, it is true as Mr. Haig stated that the extension of the writ of *habeas corpus* to persons detained under Repressive Regulations will to a great extent nullify the operations of those Regulations. My Honourable friend Sir Sankaran Nair, with his profound legal knowledge, dealt with the question very fully. I will only cite here one passage from Morley's Recollections in which he effectively answers the Government of India's argument when they pressed for the retention of this power under the Regulations and objected to the writ of *habeas corpus* or doing anything which would bring those persons under the ordinary process of the law. Lord Morley in his Recollections addressing the Viceroy said :—

“ You state your case with remarkable force, I admit. But then I comfort myself in my disquiet at differing from you, by the reflection that perhaps the Spanish Viceroys in the Netherlands, the Austrian Viceroy in Venice, the Bourbon in the two Sicilies, and a Governor or two in the old American colonies, used reasoning not wholly dissimilar and not much less forcible ”.

Speaking of the Regulations, this is what Lord Morley wrote :

“ The question between us two upon this matter may, if we don't take care, be what the Americans would call ugly. I won't repeat the general arguments about deportation. I have fought against those here who regarded such a resort to the Regulation of 1818 as indefensible. So *per contra*, I am ready just as stoutly to fight those who wish to make this arbitrary detention for indefinite periods a regular weapon of Government. Now your present position is beginning to approach this. \* \* \* \* \*

“ You say, ‘ We admit that being looked up they can have had no share in these new abominations ; but their continued detention will frighten evil doers generally.’ That is the Russian argument ; by packing off train loads of suspects to Siberia we will terrify the anarchists out of their wits, and all will come out right. The policy did not work brilliantly in Russia, and did not save the lives of the Trepoffs, nor did it save Russia from a Duma, the very thing that the Trepoffs and the rest of the ‘ offs’ deprecated and detested ”.

I say this is not going to save the British Government in India either.

THE HONOURABLE SIR DINSHAW WACHA : Lord Morley would have modified his opinion now, under present altered conditions.

THE HONOURABLE MR. V. RAMADAS PANTULU : I wish he lived to hear my Honourable friend Sir Dinshaw Wacha on that point. Perhaps he would then have benefited by Sir Dinshaw Wacha's advice. The Honourable Mr. Haig took objection to my saying that this piece of legislation was an uncivilised one and that it ought not to be on the Statute-book. He consoled himself with the thought that few people in this country were literate and would hardly know what was on the Statute-book. Therefore that was not a consideration which need weigh with the House. But may I say, Sir, speaking from the point of view of civilisation, the civilisation of a country is judged by its laws. There are other civilised nations in the world who will judge the British Government in this country by the laws it enacts and enforces. Therefore, Sir, you will be judged by your peers among other nations. Therefore, let not the Government console themselves with the thought that the people of India are too ignorant and illiterate to know the laws of the country and that they only know how to suffer the punishments inflicted under those laws.

I would once more respectfully urge the Government to take a broad view of this question. If good-will is to prevail in this country, these repressive laws, which are a Damocles' sword hanging over our heads, must go. So long as that is not done, no progress is possible. If the Government is sincere in its professions that it wants to guide the people of this country along the path of progress and self-government, the best way is to give freedom. The difficulty is that the Government is not responsible to the people. My Honourable friend over there used more than once in his reply the word "responsibility." May I know to whom he is responsible? Even under the Government of India Act it is claimed that the Government is not responsible to the legislature. It is both irresponsible and irresponsive. Therefore, it does not lie in his mouth to say that the Government is responsible. It is not even responsive. That is why we have a certain amount of suspicion against the Government and the best way of removing that suspicion is not to dangle these repressive laws over us but to take a broad and statesmanlike view of the matter and to vouchsafe freedom and liberty of the citizen to the people of this country.

THE HONOURABLE MR. H. G. HAIG: Sir, I do not wish to detain the House long at this hour. My Honourable friend the Mover has put his case, I quite admit, in a temperate way and thereby I think he has undoubtedly strengthened it. But I do not think he has really traversed substantially the main points which I made in my speech, and which I do not propose now to repeat to the House. He said that there were ample opportunities to repeal this Act earlier and that the Government would have been wise to have taken those opportunities. But, Sir, one of the main points I wish to make is that from time to time, unfortunately in this country, and at times which cannot be foreseen or predicted, occasions arise when it is necessary to act, and when, if my Honourable friend's recommendation had been accepted and the Act had been repealed before 1919, the country might have been placed in a very difficult position. Only in the last few years, as my Honourable friend is aware, this Act has had to be applied both in the Punjab and in Burma, and I wish to say quite definitely that in my opinion the application of this Act in the Punjab in that exceedingly dangerous conspiracy, the Babbar Akali, was one which was fully justified in the interests of the security of the whole country. I do not deny that a serious responsibility rests on the Executive Government in declaring an association to be unlawful, but what I do claim is that those powers have always been exercised with a due sense of responsibility.

THE Honourable Mr. Khaparde, I think, asked why it was not possible to put the Government case before the courts, and the same point has been made by several speakers. Well, Sir, the main thing is that this Act is employed only when there are conditions of serious and widespread disorder in the country; and at a time like that is it possible to go through the lengthy legal processes, to have a trial first of all in the Magistrate's court and then by slow gradations up to the High Court where there will no doubt be long and very learned arguments and in the meantime perhaps six months will have gone by and what is the state of the country? When disorder has once got a start it cannot be overtaken, and that is why when these circumstances unfortunately arise it is necessary to act at once.

Then, Sir, I think, a certain amount of prejudice has perhaps been raised against Government in connection with the conviction of certain particular

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individuals under Part II of this Criminal Law Amendment Act. About that I only want to say this much, that the fact that particular individuals have been convicted under the Act does not show that the circumstances prevailing in the country did not justify the application of that Act. The situation, as I see it, Sir, was this that certain respected persons did think it their duty, as I mentioned the other day, as a political protest to defy the laws of the country, and at the moment the easiest way to defy those laws was to break this particular provision, which carried with it no moral obliquity. That is no reason for holding that these particular organisations should not have been proclaimed as unlawful.

Then, Sir, my Honourable friend Sir Sankaran Nair, developed a learned argument in favour of an appeal to the High Court. Well, Sir, I have dealt with the main point, I think, when I explained how it would not really meet the situation if we have a long process of legal trials ending in the High Court ; but apart from that the Bill, as it stands, takes away from the Local Government altogether the power of declaring an association to be an unlawful association, and the situation is not that which my Honourable friend's argument, I understand, really contemplated—that is to say, a Local Government declaring an association to be unlawful and then an appeal to the High Court ; that is not the situation as it arises under this Bill.

Then, Sir, one final word in connection with a remark which the Honourable Sir Sankaran Nair made. He spoke of the non-co-operation days in the United Provinces where this Act was used, and he said that the use of this Act increased the gulf between the Government and the people in the United Provinces and I understand caused great resentment and hostility. Well, Sir, I consulted my own experience, and I confess I was surprised at what the Honourable member said. I belong myself to the United Provinces. It so happened that during the days of the non-co-operation movement when it was at its height I was away from the Province, but I returned to the Province to the district of Agra in September 1922, I suppose about six months after this action had been taken, and having read a great deal about the unrest in the United Provinces, the ill-feeling and the terrible tragedies of which I had heard, I was astonished when I returned to the Agra district—a district which in my earlier service I had known very well—to find how unchanged the attitude of the people was, how entirely friendly, and what excellent relations there were between the people and the Government officers.

I inquired about conditions there some six or eight months previously and I found that during the previous cold weather Government officials could hardly camp in that district without being insulted. I went all round the district in the cold weather of 1922-23 and met everywhere with manifestations of the greatest friendliness. Well, Sir, there, it seems to me, is the real result of the application of those measures.

In conclusion I would merely emphasise once more the serious responsibility that rests on this Council in the vote that they are about to give and I hope that their votes will be given with a due sense of that responsibility.

**THE HONOURABLE THE PRESIDENT :** The question is : That the Bill to repeal and amend certain provisions of the Indian Criminal Law Amendment

Act, 1908, and the Code of Criminal procedure, 1898, as passed by the Legislative Assembly, be taken into consideration.

The Council divided :

AYES—17.

Desika Chari, The Honourable Mr. P. C.  
Govind Das, The Honourable Seth.  
Khaparde, The Honourable Mr. G. S.  
Mahendra Prasad, The Honourable Mr.  
Manmohandas Ramji, The Honourable  
Sir.  
Mukherjee, The Honourable Srijut Loke-  
nath.  
Natesan, The Honourable Mr. G. A.  
Oberoi, The Honourable Sardar Shivdev  
Singh.  
Ram Saran Das, The Honourable Rai  
Bahadur Lala.

Ramadas Pantulu, The Honourable Mr.  
V.  
Rama Rau, The Honourable Rao Sahib  
Dr. U.  
Rampal Singh, The Honourable Raja Sir.  
Ray Chaudhury, The Honourable Mr.  
Kumar Sankar.  
Sankaran Nair, The Honourable Sir.  
Sethna, The Honourable Sir Phiroze.  
Sett, The Honourable Rai Bahadur Nali-  
ninath.  
Sinha, The Honourable Mr. Anugraha  
Narayan.

NOES—25.

Akbar Khan, The Honourable Major  
Nawab Mahomed.  
Alay Nabi, The Honourable Saiyid.  
Bell, The Honourable Sir John.  
Berthoud, The Honourable Mr. E. H.  
Bray, the Honourable Sir Denys.  
Brayne, The Honourable Mr. A. F. L.  
Charanjit Singh, The Honourable Sardar.  
Commander-in-Chief, His Excellency the.  
Corbett, The Honourable Sir Geoffrey  
Latham.  
Dabadhoy, The Honourable Sir Maneckji.  
Das, The Honourable Mr. S. B.  
Froom, The Honourable Sir Arthur.  
Habibullah, The Honourable Khan Baha-  
dur Sir Muhammad, Sahib Bahadur.  
Haig, The Honourable Mr. H. G.

Hooton, The Honourable Major-General  
Alfred.  
McWatters, The Honourable Mr. A. C.  
Mehr Shah, The Honourable Nawab  
Sahibzada Saiyid Mohamad.  
Misra, The Honourable Pandit Shyam  
Bihari.  
Muhammad Buzlullah, The Honourable  
Khan Bahadur.  
Stow, The Honourable Mr. A. M.  
Swan, The Honourable Mr. J. A. L.  
Tek Chand, The Honourable Diwan.  
Tudor-Owen, The Honourable Mr. W. C.  
Umar Hayat Khan, The Honourable  
Colonel Nawab Sir.  
Wacha, The Honourable Sir Dinshaw.

The motion was negatived.

The Council then adjourned for Lunch till a Quarter to Three of the Clock.

The Council re-assembled after lunch at a Quarter to Three of the Clock, the Honourable the President in the Chair.

## RESOLUTION *RE* CONSTITUTION AND POWERS OF THE COUNCIL OF STATE.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay : Non-Muhammad-an) : Sir, with your permission I would request the House to allow me to alter

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one word in the Resolution. I would like to alter the word "Indians" in the third line to the word "persons".

THE HONOURABLE THE PRESIDENT: Will the Honourable Member move it in the amended form.

THE HONOURABLE SIR PHIROZE SETHNA: Thank you, Sir.

I beg to move, Sir:

"That this Council recommends to the Governor General in Council the appointment of a Committee consisting partly of elected and partly of nominated non-official or official Members of both Houses of the Central Legislature with some persons, outside the Central Legislature who are known for their study and knowledge of constitutions to consider and report on—

- (1) the constitution and powers of the Council of State;
- (2) the qualifications of Members and voters thereof;
- (3) the constitution of the constituencies entitled to elect Members to the Council of State; and on
- (4) other incidental matters;

so as to make the Council of State a proper revising Chamber.

The Committee to report on or before 1st August 1928."

This Resolution raises the question of what should be the future constitution, powers, functions, etc., of this Council. Nearly seven years have elapsed since, under the reformed constitution of 1919, this Council came into existence and the Statutory Royal Commission will soon be appointed to inquire into the entire system of government introduced by the Government of India Act, 1919. There will soon be therefore a full consideration of the constitution that has brought us into existence.

The House is aware of the brief history of this Council. The original scheme for the constitution of the Council of State as proposed in the Joint Report on Reforms, was different from that which ultimately found embodiment in the Act. The authors of the Joint Report wished to make the Council of State a mere organ for carrying Government legislation in matters which the Executive deemed essential, they did not aim at setting up a complete bicameral system. They said:

"We do not propose to institute a complete bicameral system, but to create a second Chamber which shall take its part in ordinary legislative authority in matters which the Government regards as essential."

The Joint Parliamentary Committee brushed this original scheme aside and urged that the Council "should be reconstituted from the commencement as a true second Chamber." The Government of India Bill was accordingly amended and this Council was constituted on lines which are supposed to make it "a true second Chamber". The Indian Legislature was thus deliberately given a bicameral form, and the question which we have got to consider is, is it possible to improve the system so as to make the Council of State conform to sound conceptions of what a true second Chamber should be.

I do not think, we shall ever go back upon the system and prefer a single Chamber Legislature. The relative merits of the double Chamber system and the single Chamber system are still a matter of controversy. Within

recent years, two Eastern States, namely the Turkish Republic and the Far Eastern Republic of Siberia have adopted the single Chamber system. On the other hand, the Irish Free State has deliberately preferred the double Chamber system. Barring such exceptions, the general consensus and trend of opinion among political thinkers and politicians all over the world are in favour of the double Chamber system. Gambetta, the great French statesman who saved France from the debacle of the Franco-German War of 1870, expressed an opinion about the bicameral system which may yet be considered as truly representative of all enlightened and sane opinion on the subject. Gambetta at first did not approve of the bicameral system and was opposed to the institution of the Senate in the French constitution. Later on, however, he became its resolute and reasoned supporter. In 1882, he declared that the principle of two Chambers

“is the guiding principle of all parliamentary government and remains despite past errors the guiding principle of all democratic government”

I think, it is impossible to improve upon this estimate of the bicameral system, and we may assume with all justifiable confidence that this Council of State has come to stay, that its necessity and value as a true second Chamber are generally recognised.

Having made the ground clear, it is obvious our object must be to make this Council a true second Chamber. Now what is a true second Chamber? What are its functions? In England there has been for years past and there still is a good deal of discussion as regards the functions of the second Chamber. In 1917 the then Prime Minister of England set up a “Conference on the reform of the Second Chamber” consisting of 50 members drawn in equal numbers from both Houses of Parliament. The Chairman of the Conference was the late Viscount Bryce, the eminent author of those two great works “American Commonwealth” and “Modern Democracies”. In the opinion of the Conference, the functions of the second Chamber are :—

- (1) the examination and revision of Bills brought from the House of Commons,
- (2) the initiation of Bills dealing with subjects of a practically non-controversial character, which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.
- (3) the interpretation of so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it, and
- (4) full and free discussion of large and important questions.

The Conference of course considered the question with special reference to British conditions, but there can be no doubt these four functions may be taken as the proper functions of every true second Chamber. Of these four functions, I consider the first and the last as the most important. The popular Chamber is perhaps the arena where more important issues are fought out and its proceedings are therefore followed with keener interest and attention. But the belief is that it would be doing no injustice to the popular Chamber to say that its atmosphere is predominantly partisan, that it is more apt to be



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swayed by excessive enthusiasm, by emotion rather than by cold reason, by what is demanded in the interest of party, than by what is warranted by the interests of the nation. It is possible, therefore, that its legislation may at times be hasty, ill-judged, partial, indifferent too, if not positively disregarding of, the interests of minorities. It is in fact these characteristics of the popular Chamber that constitute the justification for the institution of the second Chamber. The second Chamber is a body of what are called "senatorial persons" that is, of persons who are so far advanced in age as to be free from the vehement impetuosity of youth, and yet not so far advanced as to have developed the intellectual sluggishness of senility...

THE HONOURABLE SIR DINSHAW WACHA (Bombay : Nominated Non-official) : Including yourself.

THE HONOURABLE SIR PHIROZE C. SETHNA : Men who will approach every question, not from the narrow party point of view, but from the broad national point of view, who will bring to bear upon it, a rich, mature, calm and trained judgment illumined by enlightened reason, by actual practical experience of complicated human affairs, who will constantly endeavour to be just to all interests, to minorities no less than to majorities and who will seek to reconcile and verify all interests for the common good of the nation. This may seem an ideal difficult of attainment ; it is, all the same, an ideal to which we must approximate as much as possible.

Now, let me turn to the constitution, powers, etc., of this House, so as to indicate some of the questions which the Committee which I am proposing will have to investigate.

The Council of State consists of sixty Members of whom thirty-three are elected. The first question that arises is if the number of elected members is an adequate one ? The second Chamber, it is true, should not be a large unwieldy body. It should be a select, compact body, but without contravening this principle, may not the number of elected Members well be increased ? Then again, is there any need even in the transition stages for official Members or at any rate for so many official Members in this House ? Further, if the constitution of India is to be developed on federal lines, if India is ultimately to be a Federation, it is necessary to examine if the different provinces or States, as they may come to be called should have unequal representation as at present or should they elect the same number of members, irrespective of the size and population of each province as is done in federal countries like America, South Africa, and Australia ? Federalism implies equality of constituent States in federal relations and this, obviously, means that no single state should have preponderant or excessive representation in the second Chamber which is regarded as the special custodian of federal interests and relations, which, broadly speaking, are the same in each case. Whilst there is equal representation in the Upper House, in the Lower House the number of representatives is dependent on the size and population of the State. The Senate in the United States is therefore the true Federal House and for various reasons actually wields greater power over public affairs. All these questions, therefore, namely, what should be the strength in numbers of elected Members of this Council, whether each province should have the same measure of representation

or whether it should vary with area and population, and whether the official element cannot wholly or partially be dispensed with or whether its continuance is still desirable, will require consideration.

Then, again, there are these questions, namely, what should be the qualifications of senators, that is, of Members of this Council, and who should have the right of electing them. With

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regard to this we find different provisions in different countries. Most constitutions require an age limit for a senator, some fix it at 30, some at 35 and others even at 40. In France, senators must be forty years old, and that is the only qualification required of them in that country. In our country there is no special age limit for Members of this Council, both the Members of the Legislative Assembly and of the Council of State must be at least twenty-five years of age. As the theory of the Second Chamber implies that it should crystallise the ripe wisdom and mature judgment of the nation, it seems desirable to lay down a higher age limit for Members of that Chamber than for those of the popular Chamber. Many constitutions insist on a property qualification, but it deserves to be noted that the Bryce Conference, to which I have already referred, has expressed the opinion that there should be no such qualification for elected members of the amended House of Lords as proposed by the Conference.

This Council of State is elected on the principle of direct election, but the franchise is based mainly on a high property qualification. As regards direct election, the Bryce Conference rejected it on the ground that a directly elected Second Chamber would tend to become a rival of the House of Commons and be able logically to claim co-ordinate authority. In France, the Senate is elected by electoral colleges consisting of members of local authorities or bodies—a plan which too does not find favour with some people on the ground that local authorities are not elected with the idea of fulfilling such a purpose. In South Africa, the members of the Senate are elected for each province by a group of electors consisting firstly of the members of the provincial Council of the province and secondly of the members of the House of Assembly elected from the same province. If we are to follow that principle here it will mean this, that the Punjab would be represented in the Council of State by Members who would be elected by the Members of the Punjab Legislative Council *plus* Members who have been returned by the Punjab Province to the Legislative Assembly. In Norway, whose second Chamber is considered as one of the best in the world, the system is that after the “*Starthing*” has been elected, it elects from among its own members one-fourth the number to constitute the Second Chamber, the “*Lagthing*” and the remaining three-fourths constitute the first Chamber, the “*Odelsting*”.

If we classify all the various plans adopted for the constitution of the Second Chamber in different countries we shall find that they fall under each of these, apart, of course from the hereditary principle, namely,

- (1) direct election by large constituencies,
- (2) nomination for a small number of the Chamber in order to secure the presence of persons of eminence not actively engaged in party politics,

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- (3) election by local bodies grouped together in geographical areas on some such place as obtains in France, and
- (4) election by members of the provincial legislature and by local members of the First Chamber, or by members of the First Chamber themselves.

We shall have to consider whether the existing system is not the best for this country or whether it should be replaced by the system of election by local bodies as in France or by members of the provincial Councils along with local members of the Legislative Assembly as in South Africa.

Then, there are the most important questions of all, the question of powers and the question of settlement of disagreements between the two Chambers. The powers of the Council of State are almost co-equal with those of the Legislative Assembly. Money Bills are not excluded from its decision and vote, as in some countries, and the only power which it does not possess is that of voting on the Budget, which is exclusively vested in the Legislative Assembly. It is difficult to understand the logic of this arrangement. We have the right to vote on every Finance Bill ; no difference is made between such a Bill and any other Bill. All are treated alike. A Finance Bill of course brings in revenue which forms part of the Budget, but yet we cannot vote as to how the revenue should be spent. Our vote is asked for when it is a question of revenue ; we are asked to sanction Government proposals of taxation, but we are debarred from sanctioning expenditure. We are considered fit to control the raising of money ; we are not considered fit to control the expenditure thereof. This is an item which would be taken in hand by the Committee. The Members of this Council, constituted as it is, represent a body of voters who pay the largest amounts of revenue to Government, either by way of land revenue or income-tax, and yet they have no right to tell the Government how the revenues ought to be spent. If the Second Chamber is to consist of men with riper judgment surely their decisions on matters of public expenditure cannot fail to be valuable to the Government. I therefore drop a suggestion which may well receive consideration namely, why should the Budget not be considered and voted on in a joint sitting of the Legislative Assembly and the Council of State ? Such a system obtains in Norway, and it is certainly worth while considering whether it should not be adopted in this country.

As regards the settlement of differences between the two Chambers, the convening of a joint sitting depends upon the discretion of the Governor General who may or may not convene it. There is a limit of six months fixed before which a joint sitting can be called. Why should such a discretion be given to the Governor General, why should not a joint sitting be made obligatory in such cases and why should not the period of six months be removed ? I should like the Committee to consider whether it should not be made obligatory under the Act for a joint sitting as soon as there is a difference of opinion between the two Houses. These are all points which deserve careful consideration by the Committee.

There are several other points in connection with this question of the second Chamber, such as its duration, whether for five years or longer or whether a certain proportion of its Members should go out of office after a certain number

of years and so forth. I must content myself with a bare reference to them. One other point for consideration would be why the Council should not elect its President as does the Assembly. I have said enough to show what ample scope there is for reconsideration and revision of the system of the second Chamber as it obtains in this country. The object is to secure the best possible system, having regard first to the various theoretical considerations and views bearing on the subject, secondly to the lessons that may be drawn from the systems of other countries and their actual working, thirdly, to the special conditions of this country and fourthly to the actual working of the existing system since its inception.

There are other features of the existing system to which reference must be made. Except in the Central Provinces, where there is only one general constituency, in all other provinces there are separate electorates for Hindus and Muhammadans.

THE HONOURABLE MR. P. C. DESIKA CHARI: (Burma: General) : In Burma also you have only one general constituency, both for Hindu and Muhammadan voters.

THE HONOURABLE SIR PHIROZE SETHNA : I stand corrected. Then, except in two provinces, namely the Central Provinces and Burma, in all other provinces there are separate electorates for Hindu and Muhammadan voters. And there is also special representation of European commerce in Bombay, Calcutta and Rangoon. The European Chambers of Commerce of these places have the right to elect one member each. With regard to the first feature, it is a matter of sincere satisfaction that responsible Indian opinion is growing in favour of joint electorates with reservation of seats for minorities. Now in the matter of the Council of State, assuming that the existing system of direct election is to be maintained, is it not possible to go further and do away with the principle of reservation of seats ? Can we not have a thoroughly and purely national system of representation, at least in the case of the Council of State ? Is it not possible to give at least a trial to such a system for sometime ? Here is an important avenue for exploration, and surely it deserves the careful attention of all those upon whom rests the serious responsibility of building up the Indian nation.

All these matters call for full and careful investigation and therefore my Resolution proposes that a Committee of both the Houses should be appointed to consider and report on them. It seems to me peculiarly appropriate and specially desirable that they should be considered by such a Committee. I have in the course of my speech, more than once referred to the Bryce Conference, it consisted of thirty members drawn from both Houses of Parliament. In South Africa also, in 1920, the South African Senate itself appointed a select committee to consider and report on its future constitution. Many of us have had personal experience of the actual working of this House ever since its establishment, and a considered report by a Joint Committee of this House and of the Legislative Assembly is bound to carry considerable weight with the Government of India and the Statutory Commission. We have every right to have our say in the determination of these important questions, and though no doubt every individual expression of views will receive the consideration to which it may be entitled a well thought out and carefully con-

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sidered scheme about the future constitution, powers, functions, etc., of this House, prepared by some of the best minds in both the Houses will not fail to prove more valuable and fruitful, and be of immense assistance to the Statutory Commission, and ultimately to the British Parliament, when the existing constitution comes to be renewed, revised and reformed. Now, Sir, with your permission, I suggest the alteration of the word "Indians" into "persons". It was by some oversight that the word "Indians" was put in. I suggest this alteration because I do not want the Committee to consist of Indians only. I have not said so in the early part of the Resolution where I ask for certain Members of both Houses to be appointed to the Committee.

I have proposed that there should be one or two outside members on the Committee with a view to secure the advantage of the knowledge of some men outside the Central Legislature who are known to be students of constitution and of constitutional theory and history. I feel not the slightest doubt that the Committee will perform a useful and valuable function and that its contribution to the solution of the question of the best possible second Chamber for this country will receive the most careful and respectful consideration of those whose duty ultimately it will be to give statutory expression to any changes that may have to be made in the existing constitution. I ask for the report to be submitted before 1st August 1928 presuming that the Royal Commission will arrive in this country after that date. If the Report is ready by 1st August, it may be considered by the Statutory Commission. With these words, Sir, I commend the resolution to the acceptance of the House.

THE HONOURABLE THE PRESIDENT: Resolution moved:

"That this Council recommends to the Governor General in Council the appointment of a Committee consisting partly of elected and partly of nominated non-official or official Members of both Houses of the Central Legislature with some persons outside the Central Legislature who are known for their study and knowledge of constitutions to consider and report on—

- (1) the constitution and powers of the Council of State;
- (2) the qualifications of Members and voters thereof;
- (3) the constitution of the constituencies entitled to elect Members to the Council of State; and on
- (4) other incidental matters;

so as to make the Council of State a proper revising Chamber.

The Committee to report on or before 1st August 1928."

THE HONOURABLE MR. P. C. DESIKA CHARI: Sir, I welcome this Resolution and to anticipate the objection that the Statutory Commission is coming out shortly and it is not desirable to appoint a Committee to go into these questions, I submit we must be doing some spade work and the Committee which is proposed to be appointed would be in a position to prepare all the materials necessary to put forward before the Statutory Commission.

Sir, before I go into the details of this Resolution I would submit that unless we have a full fledged constitution it is not desirable to have a revising Chamber, i.e., a bicameral system of Legislatures is not desirable at all. My Honourable friend the Mover said the work of the Council of State is recognised and appreciated throughout the country but my own experience of the sort of appreciation which the work of the Council of State calls forth is that the

Council is regarded as an absolutely reactionary body which is ready to set aside all the decisions of the other House. I do not say that I am of that opinion but I do believe and my knowledge and experience of the country show that people generally regard it as a reactionary body which ought not to exist. (*The Honourable Sir Dinshaw Wacha*. "Question"! ) And the reasoning generally seems to be this. Here the popular representatives have got obviously a narrow majority but really people think, and they are right in thinking, that there is no effective majority at all to represent popular views. Some of them go further and say that if you really make this a popular Chamber it will be redundant, in which case it is not desirable to have a Council of State : if you keep the Council of State as it is then an absolutely reactionary body like it is not necessary ; and so they argue it is not necessary to have a second Chamber at all. I think there is some force in this view which is to-day prevalent throughout the country. It is for this reason. In all countries where you have a parliamentary system of Government, the Executive is really responsible to the Legislature and there is a chance of the opposition shouldering the responsibility of office in a system run on really party lines. Unless you have a parliamentary system of government like that the only thing that non-officials can do is to do the work of criticism and I believe, taking into consideration the fact that they have not got the knowledge which is available to the official members, their criticism cannot be effective and they will not be doing as efficient work as the opposition in any parliamentary system of government. Now whether you have a unicameral system or a bicameral system—whatever it is—the Members will get divided into people who support the Government, that is, the pro-Government Party, and the Party which is opposed to the Government : and if it is to be on these lines a second Chamber will not really do any effective or efficient work. My learned friend has been dealing at great length with the advantages of a second Chamber. I entirely agree with him, with this reservation, that unless you get a full-fledged constitution under which the Government is fully responsible to the Legislature, the second Chamber will not really be useful. Various views are held and I incline to the view that if a second Chamber is necessary even under the present transitional stage or with further reforms, while the Government is not fully responsible to the Legislature, then the proper course would be to have a system which has been accepted to be the best according to the latest authorities, *i.e.*, that the Lower House ought to elect the second Chamber not from among its own members but from among a class of people who have got the necessary qualifications outside. If that is done, a really efficient revising chamber can be secured and I think opinion even in England is coming round to this view, that the House of Commons ought to elect the House of Lords from among the peers. I think a system like that would be conducive to the harmonious working of the two Houses while at the same time ensuring the election of people who in the eyes of the Lower House would be just the proper persons to revise the views of the Lower House.

My learned friend has dealt with the various aspects of the question and it is not necessary for me to deal with them. I would only submit that in the case of Burma, especially, which has got a large population there is only one representative to represent all classes of people. My learned friend

[Mr. P. C. Desika Chari.]

instanced the case of the Central Provinces which also, I believe, is a fairly big province. If there is to be a really effective second Chamber, care should be taken to see that a proper number of members are elected from each of the various provinces ; otherwise it might very well happen that the views of a particular province will have to be specially brought to the notice of the House and, as very often happens, a solitary Member from a certain province whose activities have been called into question has absolutely no chance to meet some of those complaints which are urged against the particular province. For instance, Sir, this morning I tried to catch your eye : I do not know if I am right in referring to it : but Burma had been repeatedly referred to in support of the case for the continuance of the Criminal Law Amendment Act, and I tried my level best to catch the eye of the President and repeatedly got up to give my point of view about the troubles in Burma where there was gross abuse of the powers under the Criminal Law Amendment Act. But, unfortunately, Sir, the solitary Member from Burma was not able to secure the attention of the House and he could not give the opinion of a particular province and I could not comply with the request made by Sir Arthur Froom that the representatives of each province should come out and give the views of their own particular province. The points have been dealt with in great detail and I have no desire to exhibit my knowledge of constitutions, in which I specialised in my college days and with which I have been keeping in close touch up till now. With these words I heartily support the Resolution.

THE HONOURABLE MR. H. G. HAIG (Home Secretary) : Sir, I feel some little difficulty in dealing with my Honourable friend's Resolution. On the one hand this is clearly a time when it is most important and desirable that attention should be directed to these constitutional problems in view of the re-examination of the constitution which is to take place shortly, and I think that a discussion in this Council is a valuable method of expressing and ascertaining opinion. My difficulty, however, is that the particular action which my Honourable friend suggests does not seem to me to be likely to lead to any very practical results. I shall develop that point in a moment. But before I go on to that, I am glad to see that my Honourable friend at any rate proposes in the new constitution to continue the Council of State and is a believer in the bicameral system. One cannot tell what views the Statutory Commission might take ; but personally it seems to me that the Council of State performs very valuable functions in the constitution as it stands at present. My Honourable friend is not one of those who believe in that old criticism of a second Chamber " If the second Chamber agrees with the representative house, it will be superfluous ; if it disagrees it will be mischievous." That is the kind of criticism that is always made by those who do not believe in second chambers ; and a good deal of the criticism which I think my Honourable friend Mr. Chari was inclined to level at the present Council of State was inspired by ideas of this character. It is obviously irritating to what calls itself the representative house if it finds another body which has the power of disagreeing, revising and reviewing its decisions ; but that, Sir, is essential in any bicameral system. The Committee which my Honourable friend suggests should be appointed is to look to the constitution

of the future. The task which it is asked to perform is to devise a true second Chamber for the new constitution. That is where my difficulty begins. How can we devise an essential organ of the constitution without knowing what that constitution is going to be? We can of course explore the experience of other countries. We can collect the various alternatives which my Honourable friend has already indicated to the House. But, Sir, when that is done—and I do not minimise the importance of that work—it remains after all a somewhat theoretical treatise on second chambers; and I cannot help thinking that we might perhaps be able to prepare, in the Home Department, a treatise of that nature, a constitutional treatise, which no doubt would be a very valuable thing for the consideration of the Statutory Commission.

Now, I shall deal with the question in a little more detail. As I have said my difficulty is how is this Committee to choose between these bewildering alternatives that it might be possible to follow? What is to guide its practical choice? How, for instance, is the Committee at this stage going to decide such a fundamental question as whether the Council of State should be based on substantially the kind of electorates on which it is based at present, or whether the Council should represent provinces on a federal pattern? My Honourable friend, I think, referred to the latter solution, but until the Statutory Commission has been here, and has considered what is the future general line of development in India, how is it possible to decide whether the Council of State should continue substantially on its existing basis or should be based on federal ideas?

Then again as regards the powers, the Council of State is a part and at present, I think, a very essential part of the balance of the constitution. Every constitution consists of a series of checks and balances interlaced and interacting. Now, Sir, how can we determine what should be the powers of the Council of State until we know what would be the powers of the other organs of the constitution, and whether a considerable check is required or a less effective check is required on other bodies? My Honourable friend mentioned the case of the American Senate. A second Chamber may on the one hand have powers so small as to be almost negligible; on the other hand it may have powers like the American Senate which are considerably greater than those of what we may call the Primary House. I think, Sir, under these circumstances the Committee which my Honourable friend proposes to appoint must in effect produce a purely theoretical report. It might be of value, I do not deny that the collection of material or the reflection on constitutional theory is of great importance, but I think that the material could be collected in a much simpler and less expensive manner. My Honourable friend referred once or twice to the Bryce Committee which was appointed, I think, to consider the revision of the constitution of the House of Lords. But that, I submit, is not a true analogy with the conditions that are about to face us. That Committee had to consider one limited point. There was an old founded constitution in perfect working order and all it had to consider was in that constitution what should be the position of the second Chamber. But here, Sir, we are about to have a fundamental re-examination of the whole constitution, and to attempt to come to a conclusion as to the position or functions of the Council of State until that re-examination has taken place would, I feel, not be a feasible proposal. What I think we have to



[Mr. H. G. Haig.]

recognise is that there is probably no such thing as an ideal Second Chamber. There are a great number of alternatives, and the particular alternative to be chosen is determined by the rest of the constitution. It must be an alternative that will take its part and fit into a living constitution. I hope, therefore, that after the discussion in this Council, my Honourable friend will not find it necessary to press his Resolution to a division. I can assure him that the discussion in this Council will be brought to the attention of the Statutory Commission when it comes to this country.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadian) : Sir, I rise not to offer any definite opinion on the motion before this House but merely to make the position of my party clear in this matter. The Honourable Mr. Haig has rightly pointed out that the Resolution tabled by Sir Phiroze Sethna definitely commits him to the theory of a bi-cameral Legislature for India in future. That is a position, Sir, to which I am not prepared to commit myself. At the present time, the popular party as well as the Government are both engaged in the pastime of constitution-making. The Government, whether it confesses it or not, is actively making preparations to furnish the coming Royal Commission with materials and the Indian National Congress has appointed a Committee also to frame a constitution to be placed before the Government or the Legislature or such other body as it chooses as its demand for self-government for this country. It may be, Sir, that we may come to the conclusion that we do not want a second Chamber at all. It is a possibility. It is clear that the whole country will disclaim any second Chamber of the kind that we are now in. I have no doubt about it. There is not one man who has got the progress of the country at heart that would vote for a second Chamber of the character of the Council of State as it is at present.

THE HONOURABLE SIR DINSHAW WACHA : What is meant by the whole country ? Possibly the Congress is the whole country according to the speaker.

THE HONOURABLE MR. V. RAMADAS PANTULU : I know Sir Dinshaw Wacha is not now with the country. There was a time when he had faith in himself and in his country. Now he is a changed man.

THE HONOURABLE SIR DINSHAW WACHA : I am not at all a changed man. I am as progressive as ever I was. Because I do not agree with some of these Congress people, therefore I am a changed man. Nonsense. I must certainly protest against this sort of spiteful criticism.

THE HONOURABLE MR. V. RAMADAS PANTULU : I am very glad, Sir, for the assurance given by my Honourable friend that he is very progressive and I hope that by the time the Royal Commission comes, he will give very progressive evidence before the Royal Commission as he has told the House to-day he is working for the progress of this country. I wish him long life, I wish him more progressive ideas.

THE HONOURABLE SIR DINSHAW WACHA : I do not want your wishes on that.

THE HONOURABLE MR. V. RAMADAS PANTULU : However, that is an aside.

Apart from that, Sir, the position is, as the Honourable Mr. Haig himself says, the question of a Second Chamber is part and parcel of the entire constitution and it would not be practicable or feasible for this House to commit itself in advance to any particular scheme. Apart from that, the kind of Committee proposed by the Honourable Sir Phiroze Sethna is not a Committee that we would like to set up to report on the constitution. I will not say more than that the committee does not commend itself to me as a proper body to report on a matter of this kind. For both these reasons I would make it very clear that, so far as we congressmen are concerned, we have no opinion to express on this motion and that our attitude is one of neutrality. Speaking for myself, I would, say one word. My friend Sir Phiroze Sethna has really put forward a very comprehensive proposal in a very interesting speech and some of the suggestions made by him are really very useful. He might have referred to one recommendation of the Bryce Committee to the effect that the House of Lords should be elected by the House of Commons in future. If there is to be a Second Chamber in this country, I for one would advocate the election of the Second Chamber by the First Chamber, not from members of the first Chamber themselves but from outside. That is a very interesting scheme which one of the latest constitution writers, Mr. Roberts, on Second Chambers, has put forward with a wealth of argument. Several methods were tried in various countries. Direct election in Australia proved a failure, nomination in Canada has also proved a failure. The System of indirect election was attempted elsewhere but equally failed. The Norwegian constitution seems to furnish a suitable model. And the latest constitution writers seem to favour the idea of a First Chamber to act as an Electoral College to elect the second chamber. I for one would advocate that opinion before any Committee that may inquire into the matter. Sir, as matters at present stand, I am not in a position to vote either for the proposition or against the proposition. I would keep an open mind and if a satisfactory Second Chamber is vouchsafed to us and Government suggests ways and means to work it as a useful Second Chamber we shall consider the proposal. With these words I would leave the matter to the House.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab : Nominated Non-Official) : Sir, I support this Resolution to a certain extent, though I have not got the same ideas as my friend. I think, Sir, that we have taken this constitution from England and our House, if it was changed, ought to be changed in the direction of the House of Lords. Those men, Sir, who have to stand for election, naturally, to please their constituency so as to call themselves popular, have in season and out of season to vote against the Government as we are seeing every day.

THE HONOURABLE MR. P. C. DESIKA CHARI : And some are in season and out of season in favour of Government.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : I was coming to that also, that although the members who are nominated are of course quite allowed to vote on whatever side they like all the same they sometimes have to think of the Government also.

So, I think, Sir, if there is going to be any reform of this House, it ought to contain those gentlemen who have got a real stake in the country. (An

[Sir Umar Hayat Khan.]

*Honourable Member* : " Hereditary ".) Yes, hereditary Chiefs, Nawabs and other people of some standing. They should neither have to do anything with any constituency nor should they look up to the Government for any favours. If such independent people are taken in this House, it will be a very valuable Chamber indeed, and if any Committee is going to be appointed, as proposed by the Honourable the Mover, I hope it will take into consideration the view I have placed before the House to-day.

THE HONOURABLE SIR PHIROZE C. SETHNA : Sir I have not much to say in reply. I had brought forward this Resolution with a view to assist the Government, so that if a Committee were appointed to go into the question of the reform of this House, it might submit a well considered report which might greatly help both the Government as well as the Statutory Commission that is likely to be appointed shortly.

My Honourable friend, Mr. Chari, expressed the opinion that the country at large had not much to say about the work done by the Council of State. Perhaps he is right. I have often heard it remarked that the best course would be either to end the Chamber or to mend it. I am not one of those who would like to end it, as I find several advantages in the bicameral system, and I certainly believe in mending it. It unquestionably requires mending and there is no doubt about it, judging from our experience of the last seven years.

My Honourable friend, the Home Secretary, said that it would be a cheaper method of meeting my demand if the Home Department prepared a treatise which, I gather, they intend to do. I am quite aware, Sir, that the Department concerned is perfectly able to put up a treatise explaining the whole situation to the Statutory Commission when it arrives, but the point is, will the Home Department put up a treatise which will contain the views of the Government of India themselves or also the views of responsible Members of either House of the Legislature of whom I have suggested a Committee should be appointed ?

My Honourable friend Mr. Pantulu has told us that he is not in favour of my bicameral Chamber.....

THE HONOURABLE MR. V. RAMADAS PANTULU : No. I merely said I want to keep an open mind.

THE HONOURABLE SIR PHIROZE C. SETHNA : Well, he may certainly keep an open mind. By the time the Committee sits, that is if one is appointed, he will I hope, have no longer an open mind, but a definite mind, that a single Chamber will suffice for the purposes of our work ; and then if the Committee is there, he can place such a view before it. He also urged that in his opinion the best Second Chamber would be the one whose Members would be selected by the Members of the lower House, but that they must be other than themselves and not one of them a Member of the Lower House itself. That again, is a very important point which might be considered by the Committee. However, Sir, I see that the Government are not favourably disposed towards this motion, and the only consolation they offer is that they will place the whole debate which has taken place to-day before the Statutory Commission. Therefore, I have nothing more to say but leave my Resolution in the hands of the Council.

**THE HONOURABLE THE PRESIDENT :** The question is :—

“ That the following Resolution be adopted.

‘ This Council recommends to the Governor General in Council the appointment of a Committee consisting partly of elected and partly of nominated non-official or official Members of both Houses of the Central Legislature with some persons outside the Central Legislature who are known for their study and knowledge of constitutions to consider and report on—

- (1) the constitution and powers of the Council of State ;
- (2) the qualifications of Members and voters thereof ;
- (3) the constitution of the constituencies entitled to elect Members to the Council of State ; and on
- (4) other incidental matters ;

so as to make the Council of State a proper revising Chamber.

The Committee to report on or before the 1st August 1928’ . ”

The motion was negatived.

# RESOLUTION *RE* EXPULSION FROM THEIR HOMES BY FRONTIER TRIBESMEN OF SIKH AND HINDU RESIDENTS OF BRITISH TERRITORY ON THE NORTH-WEST FRONTIER.

**THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI** (Punjab : Sikh) : Sir before I move my Resolution, I crave your permission to make a slight verbal change in the second line of my Resolution, and I want to substitute the word “ tribal ” for the word “ British ”.

**THE HONOURABLE THE PRESIDENT :** The change that the Honourable Member proposes to make is very important. I am very doubtful indeed whether I should have been able to admit the Resolution if he had worded it in the form in which he now proposes to put it, namely, if the word “ tribal ” had occurred for the word “ British ” territory. At this late hour, in any event I cannot allow the Honourable Member to make any alteration in the terms of his Resolution.

**THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI :** Sir, in that case, I shall be placed at a great disadvantage. Very well, Sir, with your permission I move the Resolution which stands in my name as it is. It reads thus :

“ This Council recommends to the Governor General in Council to issue such orders as may be necessary to enable the Sikh and Hindu residents of British territory on the North-West Frontier, who have been recently expelled by force from their homes by the frontier Muhammadan tribesmen, to get their properties and business restored, to ensure the future safety of their persons and properties and freedom to observe their respective religions. ”

Sir, I hope that every Honourable Member of this House is fully aware of the fact that in the last month or two a large number of Hindus and Sikhs consisting of men, women and children have been expelled from the tribal area which lies between the frontier districts of the British territory and the Afghanistan territory. One of the causes which led to this unfortunate occurrence is that the recent controversy over religions has gone on to such a high

[Sardar Shivdev Singh Oberoi.]

pitch to the great misfortune of the people, that the preachers of the respective religions have begun to use very vicious, objectionable and scurrilous language in not only criticising the principles of other religions, but in criticising even the founders of other religions. Such sort of preaching, Sir, to my mind, is the most irreligious act that any preacher can commit under the cloak of religion. I do not think for a moment that any religion can be fairly propagated by using language which is not at all warranted by the principles of that religion, which is not at all permitted by the good sense of humanity and by the ordinary moral laws. And what should I say about the filthy and scurrilous language used against the founders of the different religions? I do not think the preachers who are engaged in this sort of vilification of other religious founders are truly representing the religion to which they belong or are really serving the cause of their own religion. In my view, Sir, they set a bad example by doing things which the principles of their religion do not warrant them to do.

Recently during the last two or three years a pamphlet, named *Rangila Rasul* was written by a preacher of the Arya Samaj cult. I have not been able to read that book because that book was proscribed by Government for the last two years. From what I have heard and from the passages that I have read, I certainly think this book was of the most objectionable and of the most vicious character. No man with any moral sense can for a moment appreciate the passages written in that pamphlet. That author was convicted by the first Magistrate to two years' imprisonment. He appealed to the High Court and his appeal was accepted by the Honourable Justice Dalip Singh not on the ground that whatever he had written in the pamphlet was right—the Honourable Judge had clearly deprecated the language in which the pamphlet was written—but on some legal ground. The Honourable Judge decided that section 153-A did not apply to that case and he accepted the appeal and acquitted the man. This naturally raised a storm of agitation amongst the Muhammadan community. There were meetings held from one end of India to the other, from Peshawar to Calcutta, condemning the judgment of the High Court of the Punjab as very much damaging to the high esteem in which the Prophet is held by Musalmans. They demanded that the author should be convicted and they also demanded that the Honourable Judge who decided the case should have the good sense to resign his seat on the Bench because he made such an order. This fire was ablaze throughout the length and breadth of India. I would say that every man who has veneration for his Prophet would certainly be enraged at the scurrilous writings against the personality whom he holds in esteem and veneration. This fire which was ablaze in the British territory went beyond the British territory into the frontier parts of India. Of course, I understand there is a tribal territory between the border line of British territory and also of the Afghan Government. Of course, it is a fact that those Maliks or Sardars are neither under the British Government nor under the Afghan Government. But it is also a fact that those Sardars and Maliks and leaders of those tribes are receiving regular subsidies from the British Government and they have friendly connections with our benign Government. Because for strategic purposes the British Government have constructed certain railway lines. ....

**THE HONOURABLE THE PRESIDENT :** The Honourable Member is now beginning to get beyond the Resolution which I said I should not allow him to move. Will the Honourable Member bring himself back across the frontier ?

**THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI :** I am in a very bad plight, Sir ; in fact in the same plight as those people who have been exiled from the frontier (Laughter), of course I must confess that it is a mistake that I did not know that those people who have been exiled are not from the British territory but that they are from the tribal area. If I am allowed to proceed, I may make a few remarks.

**THE HONOURABLE SIR DENYS BRAY :** (Foreign Secretary) : On a point of order, Sir, or rather explanation. I do not know whether it will be helping the debate at all, if I correct the Honourable member when he refers to the tribal territory as not being under the British Government. Most definitely it is part of India.

**THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI :** Well, Sir, I am very much obliged to the Honourable Member for coming to my rescue and helping me by saying that the tribal part of the country is part of British India.

**THE HONOURABLE SIR DENYS BRAY :** No ; not part of British India, but part of India.

**THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI :** Of course that is a position which has arisen from my mistake. I do not think I will be justified in taking any more of the time of the House in dwelling upon this Resolution. But I would say one or two words and would ask the Honourable the Foreign Secretary to be kind enough to answer when he makes a few observations on the Resolution. I would like to have a statement about the conditions of the men who are exiled from that area on account of the agitation which took place on account of the *Rangila Rasul* case and also I would like that he should inform the House as to what the Government wishes to do in the matter of helping the people, for the sake of justice and humanity.

**THE HONOURABLE THE PRESIDENT :** Resolution moved :

" This Council recommends to the Governor General in Council to issue such orders as may be necessary to enable the Sikh and Hindu residents of British territory on the North-West Frontier, who have been recently expelled by force from their homes by the frontier Muhammadan tribesmen, to get their properties and business restored, to ensure the future safety of their persons and properties and freedom to observe their respective religions."

**THE HONOURABLE SIR DENYS BRAY :** Sir, I find myself in very great difficulty indeed. I cannot conceive how I am to speak on this motion at all unless I am able to describe the conditions in the tribal territory where the Hindu population lives. If you, Sir, will allow me that indulgence, I shall no doubt be able to put the House in a position to understand the plight of these Hindus and to understand also the action and attitude of Government. But unless I am able to describe the background and give the atmosphere in the tribal territory, nothing I could say would enable the House to realise the gravity or even the very nature of the problem.

The scene, as the Honourable Mover has now realised, is not laid in the administered districts of the Frontier Province which are British India. It is

[Sir Denys<sup>a</sup>Bray.]

laid in that belt of mountainous territory which lies between the districts and Afghanistan. It was indeed entirely wrong of the Honourable Mover to say that neither the British Government nor the Afghan Government had any concern with these tribes. It is, Sir, a historical fact dating from 1893 that all tribes on this side of the Durand line are irrevocably within our sphere—tribes for whom the British Government are solely responsible. That is a matter of historical fact, and it is essential that I should make it absolutely clear. Their territory is not British India, it is true, but it is India; under our political control, but, save here and there, unadministered.

Except in the far North, it is occupied from end to end by Pathan tribes,

4 P.M.

Moslems of course to a man: tribesmen living in a tribal state of society, here under chieftains, there under Maliks, but almost everywhere with one man as good as every other, and the bullet in his rifle as the final arbiter between them. For in the measure of independence which we, like our predecessors the Moghul and the Sikh, have found it convenient to leave these tribes, we are excluded (often indeed by actual engagements) from direct interference in their internal affairs, more especially of course in all matters touching custom and religion. To the appeal of religion the tribes are, as all the world knows, acutely sensitive. As for custom, so revered is it and so binding that the ordinary transfrontier Pathan often enough cannot distinguish it from religion. Now though tribe is often warring against tribe, clan against clan, tribesman against tribesman, it would be altogether superficial to regard the tribal state of society as anarchy or tribal law as lawlessness. For, ancient custom and tribal law go to the making up of the Pathan code of honour which regulates all Pathan conduct, and the wrath which breaches of the code arouse in the tribal community is a very powerful and effective factor in the regulation of life and conduct in the tribal area along customary line.

Foremost among the principles in this Pathan code of honour which have the sanction of ancient custom behind them, is the duty of protection of the guest and the sojourner within the tribe—conspicuously of course the protection of the tribal Hindu. Though the Hindu is obviously not a member of the Moslem tribe, he is a member of the tribal system. For generations he has lived—a handful of Indians have lived in every clan of every tribe as shop keepers, money-lenders and the like; valued, respected and indeed essential members of the tribal system; jealously protected by the tribe; their blood feuds commonly espoused by the Malik or by the tribe.

Here then is the background which will, I hope, enable the House to realise something of the true nature of the picture of what has recently happened. To the statement I made the other day in another place on the bare facts, I have little to add, nothing to subtract; and I therefore shall not scruple to plagiarise from myself. Indeed in the very short speech which the Honourable the Mover made he began to refer to the facts very fairly, and I am not sure that I cannot condense this particular part of what I want to say even more than I had intended. It would not be altogether correct to say that the contagion of bitterness over the Rajpal pamphlet spread from the frontier districts to tribal territory; for the exciting cause in the tribal territory was the arrival of a famous

trans-frontier Mulla, fresh from the Haj and fresh from the fulminations down-country against this vile pamphlet with its vile title. Under the lashings of his indignant tongue, first the Kuki Khel and Zakka Khel expelled their Hindus. Fired by their example the Shinwaris, who up till then had stood out against expulsion, insisted on their Hindus leaving. They too, like the Kuki Khel and Zakka Khel, against their will, because dead against their interest and even more so because against their Pathan code of honour, began to expel their Hindus into British territory. After some had gone they endeavoured to keep the others back. A few Hindus on being expelled were roughly handled in the Khyber; and one Hindu was stabbed and robbed of considerable property; but it was recovered in full by the Afridi Khassadars themselves. Thereafter the political authorities took elaborate precautions to ensure the safe passage of any Hindus evacuating tribal territory--whether evacuating it under compulsion, or from fear, or sympathy with their fellows. There was at one time a dangerous movement afoot among the Afridis to bring the whole of the tribe into line. But under political pressure an Afridi Jirga decided towards the end of July to suspend further action against their Hindu neighbours pending the decision on the Vartman case in the Punjab High Court. Next week, however, several families who had been living in the security of the Landi Kotal sarai moved to Peshawar. In all some 4 or 5 or 6 hundred Hindus, men, women and children, took refuge in British territory. By now the various tribal Jirgas, the Kuki Khel alone excepted, have been induced by the political authorities to agree to the return of their Hindu neighbours and have undertaken in writing that their return shall be honourable and unmolested.

Unfortunately recent inter-tribal fighting in Tirah has retarded the further clearance of this ugly episode, for the Afridis have been too preoccupied with their own very serious losses to get down to business over it.

Now, Sir, the return of the Hindus to their old position of respect in tribal territory is of course first among the aims of the political officer in the matter. Having said this, I am not quite sure that I have done them justice; for throughout it has been the foremost aim of the political officer to localise the trouble. For it is not to be thought that it was in the Khyber alone that this scurrilous pamphlet or its scurrilous title had publicity. One heard of it as far as Swat and Bajaur on the one side and as far as Waziristan on the other, and everywhere the political officer was throwing his influence into his role of peacemaker. Everywhere he succeeded save in the Khyber alone; for what trouble there was in Swat had another origin.

Perhaps I have said enough to persuade first the Honourable Mover and then the House that the motion he has presented to us is really superfluous. For this House to seek to move the Governor General to issue such and such orders for the clearance of this miserable business is surely superfluous. For this House or for government to suggest to the frontier official that his aim is wrong or that the methods he has been pursuing are wrong would be not to further the object we all have in view, but to hamper it. The frontier officer is very alive to the danger, very alive to the need for a solution and for peace, and alive also, as the Honourable Mover could not possibly be, to the limits imposed upon his powers of solution. I am the more sorry the Honourable Mover cut his speech so short, for I was anxious to know from him what measures he had



[Sir Denys Bray.]

in view. I had almost hoped that he was going to develop the theme of the impotence of Government in this matter, and the necessity, as so many newspapers have argued, of using force and of bringing armies up from down-country to reinforce the army already on the frontier, so that the Hindus might be escorted back to their homes to live their lonely lives in their old homes under the protection of the bayonets of the Indian Army. Now that suggestion has meaning and body in it only, if the Honourable Mover or those who espouse it espouse at the same time a thorough-going Forward Policy right up to the Durand Line—a policy which will bring the whole of this area of which we are now speaking under the direct administration of the British Government, and turn what is now India into British India. If the Honourable Mover has very courageously adopted that policy, I trust he will proclaim it from the house-tops; that he will go abroad and preach it. For there are many—and the number includes men of ripe frontier experience—there are many who think that therein lies the only final solution of the frontier problem. But as matters now stand, in the state of semi-independence in which we have left these tribes, such heroic measures are denied us. To use force in this connection—to suggest the use of force—implies a misunderstanding of the conditions. A carpenter does not use a hammer to drive in a screw: if he does, the screw is soon likely to fall out again. If the Hindu were indeed put back in his old home by means of an army, I am afraid his home would not be a permanent one. Perhaps I can make my point a little clearer if I take the converse case of Hindus kidnapped from British territory and taken by tribesmen across the frontier. Here indeed force is or may be a very proper means of securing our end. At any rate we often resort to it. The last big case of this kind which comes to my mind was the kidnapping of a large Hindu marriage party—seventeen unfortunate victims in all—who were taken across the frontier a couple of years ago, and whose restoration was secured by the bombing of the Faridai Mahsud country, a bombing which was continued (unhappily not without grievous loss) until every single Hindu was restored without ransom and the tribe was chastised as a deterrent for the future.

But the present problem is of course quite different. We are dealing with the return of isolated Hindus in peace and honour to their scattered homes in tribal territory. In the past they have owed their position of respect and amity in the tribe to the force of custom, to their intrinsic utility—and the services they render to the tribal system, and to their own personal influence which is often surprisingly great. Armed intervention on their behalf would obviously destroy that atmosphere of tolerance and confidence in which alone the resumption of the old life would be possible. Now, tolerance and confidence cannot be brought about by force, so long as we have tribal territory in its present condition of semi-independence. All the King's horses and all the King's men could not induce it; yet it is an essential ingredient in any real solution of the case, for no Hindu is going to open his lonely shop in tribal territory without that confidence and tolerance. To restore it, the traditional forces, the economic forces, already at work, must be allowed their full play; and the Honourable Mover may rest assured that the frontier officer, who has been deeply moved by the plight of these unfortunate men, is working steadily towards that end. And I would say here what I said the other day. That the

breach will be healed, and that soon, I am confident, provided always that nothing untoward arises from any malicious or thoughtless intrusion from without. It says something, I think, for the scrupulous care with which I weighed my words, when I find that Muslim newspapers have assumed that I was talking here only of Muslim intrusion and that Hindu newspapers have assumed that I was talking only of Hindu intrusion. In truth—and here I would underline every word—I was, and I am, afraid of both.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadian) : Sir, I should like to make only a few observations on the Resolution. As far as our information goes, the trouble was started by one Sahibzada Kakai of Panamazi, who, I believe, is a resident of British territory, in the Peshawar District. It was he who on or about the 5th July went to the tribal area and created this trouble. I am grateful to the Honourable Sir Denys Bray and to the political authorities for the influence that they have exercised and are exercising in the restoration of good will towards these poor people who have been exiled. My only object, Sir, in making observations on this point is to enquire whether or not the Government has taken any action against this Sahibzada Kakai who has been the originator and the culprit in this thing.

THE HONOURABLE THE PRESIDENT : The Honourable Member is now beginning to wander outside the Resolution, I am afraid. It does not deal with the origin of this problem. The Resolution deals solely with the solution of it.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, my object in bringing this fact up was only to bring it to the notice of the House and to the notice of the Honourable the Foreign Secretary because this is a matter that is connected with British India and this person. Sir, who has inflamed the tribal territory is likely to inflame the British territory as well and so I brought up this matter here.

The second observation, Sir, which I want to make is that under the influence of the political authorities the Maliks agreed to take back these exiles but some Khilafat volunteers on or about the 19th July went there again and they kindled the fire again and then there was a *jhugra* and, although the Maliks agreed to take them, there was a great excitement created by these Khilafat volunteers and the people were made to disobey their Maliks. The Maliks are under the influence of the Government of India and in case their influence is lost in that territory and people from the British territory go there and create trouble, I think, in the interests of the administration of India, those people, Sir, who have been the cause of this trouble ought to be brought to book.

The third observation that I want to make is that the Honourable Sir Denys Bray has said that in the case where the lorry was looted within British territory and where a man was severely wounded, whatever compensation for money and goods was required has been paid to the afflicted persons. As far as my information goes, Sir, the offenders did agree with the Political Department to pay the compensation but my information is that the compensation for the goods, which is said to be about Rs. 4,000, has not yet been paid. I humbly draw the attention of the Honourable Sir Denys Bray to this and would request him kindly to find out whether the agreement which these tribal people arrived at with the political authorities has really been carried out.

[Lala Ram Saran Das.]

Another thing, Sir, which I want to suggest in connection with the observations made by the Honourable Sir Denys Bray is that the trouble was created by Mullah Chaknawar, an Afghan Subject, who was returning from the Haj back to his own land. In that connection, Sir, I beg to say that the Government of India ought to take up this matter and move the Afghan Government to see that all the people who pass through British territory ought not to diffuse poison on their way. I think this sort of solution can be easily found and in future such people ought to be prevented from performing this sort of Haj. The tribal area is under the British sphere of influence. It is purely a technical way of saying that it is not British territory. Jirgas have been appointed in this tribal territory at the instance of the political agents and those jirgas have been giving decisions and in various other ways have been influencing those Maliks. As I have been to the country once I have realised that they are very much afraid of the British Government and anything that the British people want and the British authorities desire, they will very readily agree to. And so, Sir, I simply beseech the Government kindly to try and find some sort of employment or land for these exiled people who are now in British India. I think some sort of sympathetic treatment should be accorded to those people who can go back or do not want to go back.

One thing, Sir, and I will finish. And that is that the Honourable Sir Denys Bray made an observation that the people in the tribal territory were simply shopkeepers, money lenders, and so on.

THE HONOURABLE SIR DENYS BRAY: And so on.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: But I want to inform this House that there are a number of people who are landholders and they are agriculturists themselves. If I am wrong, Sir, I hope the Honourable the Foreign Secretary will put me right.

With these observations, I beseech the Government to do what they can to assist the sufferers.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN (North-West Frontier Province: Nominated Non-Official): Sir, I do not know why my Honourable friend Rai Bahadur Ram Saran Das says that the man who preached is from British India. It is known all over India that the man who preached was a resident of Afghanistan who was on a pilgrimage and was passing through... on his way back to preach among the independent tribesmen. Once a man is beyond Dakkha he is in Afghan territory. And if he stops at that place and if he preaches anything there, well it is impossible for anybody to stop him from preaching anything to his own people and there might be some of the frontier people who always carry on trade and they might have heard him at Dakkha, so it is an impossibility to stop a man from preaching something of his own religion outside British India.

Lala Ram Saran Das said another thing; that the lorry was looted in British India. I doubt that statement. No lorry has ever been looted in British India.

That statement seems to me to be quite incorrect.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Sir, the motor road or the trunk road are to all intents and purposes considered to be within the British territory, and if any losses occur on those roads, those losses are made good by the Government through the Khassadars who have been employed for that very purpose, and on this trunk road which is under the control of the British Government the motor lorry was attacked.

**THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN :** Well, Sir, I do not admit that fact at all.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** But it is a fact.

**THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN :** At any rate, I happened to be on the frontier in those days, and I have not heard that any motor lorry was looted on that road. I do not know if some vernacular news paper had made up a story to that effect, but the whole thing seems to me to be a mere myth and nothing else.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Ask the Political Secretary about it, and he will tell you the facts. See the papers also.

**THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN :** I have also seen the papers, and I know what it is. However, I can assure my Honourable friend Lala Ram Saran Das that if he leaves the matter to be decided entirely by the Honourable Sir Denys Bray and by the Honourable Sir Norman Bolton, both of whom have a very extensive experience of the North-West Frontier, and who know the Pathan custom very well, if things are left to them instead of carrying on a discussion in this House. I think they will be able to effect a far better and much more satisfactory settlement in the matter. If you discuss things here, it will surely embitter the feelings of the Afridis. The discussion here will do no good at all; it will merely act as a barrier in the way of effecting a speedy and satisfactory settlement; and you will be placing impediments and difficulties in the way of those Hindus who have now taken shelter in Peshawar. To my mind, my friend the Honourable Rai Lala Ram Saran Das has spoken enough and he ought to leave the matter in the hands of the Honourable Sir Denys Bray and the Honourable Sir Norman Bolton, both of whom are very sympathetic officers, and I am sure they will do everything possible to bring about a speedy and satisfactory settlement. I would advise my friend not to insist on discussing things here.....

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** I have only made a suggestion to the Honourable the Foreign Secretary.

**THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN :** Then, Sir, there is another thing about which I want to inform both the Honourable the Mover as well as the Honourable Rai Bahadur Lala Ram Saran Das, and it is this. The Afridis in their own country consider themselves quite independent. Now, some of these people, the Hindus, and Sikhs, are no doubt land-owners, but their holdings are very small indeed. Their chief occupation is money-lending and keeping the money of the Maliks. If some of the Maliks have spare money, it is deposited with some of these Hindus and Sikhs who are called sowcars. I may tell the Council that one who does business in lending and keeping money is called a sowcar. The principal business of these sowcars on

[Nawab Mahomed Akbar Khan.]

the frontier and across the border is lending money to the Afridis on good security, so that the Afridis might be able to buy their rifles, ammunition, bullocks for ploughing purposes, and so on. That is the chief business which these sowcars carry on across the border. \*

I can again assure my friend that if he were to leave things entirely to the Honourable Sir Denys Bray and to the Honourable Sir Norman Bolton, instead of embittering the feelings of the Afridis against these Hindus, things will be settled quite satisfactorily. The Afridis themselves will feel the pinch in a month or two, because, after all, according to the Pathan custom they cannot borrow money from their own people, and therefore these people will certainly feel the absence of the Hindus there. Their religion does not allow them to transact money-lending business among themselves, and therefore no business would be carried on. Therefore, these Pathans will never be able to remain for long without these sowcars. If things are left to themselves, I can assure my Honourable friend that in a month or two the Afridis will themselves take these refugees back to their territory and give them much better treatment. Therefore, Sir, there is no use of embittering the feelings of these Afridis. Of course, you might be able to take these refugees back under British bayonets to Terah. But what will be the result? You cannot keep a very big army in Terah. It will be a very big business to do so, because when it comes to the question of payment to the troops employed there, my friend will be the first person to complain about it. Of course, these people can remain under the protection of British bayonets, but the Afridi is a self-respecting man and he will consider it as undue interference in his own tribal area, and it will embitter his feeling to such a degree that he will never permit any Hindu or Sikh to remain there under the British bayonets and carry on his business. The Afridi will have nothing to do with these Hindus and Sikhs if they remain there under British bayonets; he will simply boycott these people, and he will be quite justified in doing it. It is the same here. If any British subject does not want to buy or make purchases from a certain shop, nobody can compel him to make his purchases from a particular shop. According to law, I think everybody has got that right of buying things from whomsoever he likes.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: The British are there to protect the weak.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: It is not a question of weakness at all.

Now, Sir, three solid days were given to these people to dissociate themselves from the writings of Rajpal. They were given time, and the Maliks told these people that they could remain in the territory if only they dissociated themselves from the irreligious writings of Rajpal. ....

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: I want to point out that on the 18th July all the Hindus expressed their regret and they condemned the writings of Rajpal.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: I can assure the Honourable Member that before their expulsion they were given three days' time both in Tirah and in Swat, and one of the conditions was that they should dissociate themselves from the writings of Rajpal. ....

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : They did so.

THE HONOURABLE THE PRESIDENT : The Honourable Member has constantly interrupted the speaker. We shall never be able to finish the debate unless the Honourable Member from the Frontier Province is allowed to finish his speech. He has two more minutes.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN : I quite admit that they did dissociate themselves after their expulsion, but they did not do so when they remained across the border.

It was not true that all the Hindus were turned out from other tribal land in Swat. One or two villages may have committed this mistake. The Hindus came over from Swat to Hoti in British India and were comfortably accommodated there. I must say that in Hoti, the Hindu community of the place, under good guidance, prevailed upon them to hold a meeting and condemn people like Rajpal who had maligned our Holy Prophet. After the Hindus condemned the action of those who attacked the Prophet, they were taken back after about ten days absence.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Was it through the influence of the Honourable member ?

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN : That may have been so ; it is immaterial on whose advice they were taken. The fact remains that they were taken back. Nearly three days' notice was given to these people. But I am sorry that my Honourable friend does not admit that. I can assure him that that was a fact. I do not for a moment justify the expulsion of the Hindus. Far from it, I say you cannot expect from a country like the Afridi country, inhabited by people who are of the most irritable and excitable nature anything more than that. They are not at all educated. They know how to say their ordinary prayers. They have not sufficiently learnt their religious books. They are of such a nature that they can be easily misled. I do not see that the fault rests entirely with the Afridis. They gave three days' notice to the Hindus to apologise and nothing more can be expected from them. These Hindus have been living in the tribal territory from a very long time and we have been helping them for generations. We considered the Hindus part and parcel of our tribe. We have given them all the facilities, perhaps even more than we give to our own kith and kin. An Afridi can be shot but not a Hindu trader. In spite of so many facilities offered, the Hindus of the tribal area did not dissociate themselves from the scurrilous writings of the people in the Punjab against the Prophet and that was why they were suffering.

THE HONOURABLE THE PRESIDENT : The Honourable Member has exceeded his time. I am afraid we have had a considerable amount of repetition, and I cannot in those circumstances allow him to go on.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN : With these remarks, I will advise the Honourable mover and the Honourable Lala Ram Saran Das to leave this matter in the hands of the Honourable the Foreign Secretary and the Honourable the Chief Commissioner, North-West Frontier Province. Both of these gentlemen though silent but great men

[Nawab Mahomed Akbar Khan.]

of action will very well succeed in restoring cordial relations between the two communities as before.

THE HONOURABLE SARDAR SHIVDEV SINGH UBEROI: Sir, I feel very badly handicapped because I was not allowed to make a verbal change. Candidly I do not like to waste the time of the Council by speaking on a wrong basis or by building a superstructure on wrong foundations. That was why I could not open my mind as regards the line of action to be taken by Government and which was in my mind. However, I feel gratified to hear from the Honourable the Foreign Secretary that the political officer has his aim in sending back those Hindus and Sikhs who are in exile back to their homes. I am also gratified to hear him say that the frontier officers of the Government are doing their best to negotiate in the matter and that it is hoped that the matter would be most favourably and expeditiously settled in a way that will permit the Hindus and the Sikhs to go back to their homes and get back their properties. With all respect to the Foreign Secretary, I must say that he has misread my mind when he stated that the idea in my mind in bringing this Resolution was that the Government should have recourse to military intervention or that the Government should send back the Hindus and the Sikhs to their former homes with the help of an army. Perhaps, because I belong to the Sikh race, which is noted for military valour, he has come to the conclusion that I would advocate military intervention. Far from it, I am by profession, by my creed and by my principle against war. I am quite sure that the British officers do possess sufficient intellect and sufficient experience to deal with such matters of a very delicate nature by negotiations and without military operations. I also know that the Government feel that in dealing with the frontier tribes, they should come to a settlement without having recourse to arms in the very first instance. They want to try negotiations and when they fail in that, it will be time enough to think of a military expedition to get their object fulfilled. I wish to make it quite clear that it was never my intention to advocate military intervention, nor do I think it is a practicable proposition.

I only wish to say a few words about the remarks made by the Honourable Major Akbar Khan. I know it as a fact that in the Afghan frontier in Hoti Mardan, he is very popular among the non-Afghans. He has given full liberty to non-Afghans, both Hindus and Sikhs. I want to put one question to him. He said that three days' notice was given to the Hindus. I wish to enquire whether any notice was given to the Sikhs. Why were the Sikhs yoked with the Hindus. The Sikhs never carried on any propaganda against the Prophet and they never wounded the susceptibilities of the Mussalmans.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: With your permission, Sir, may I answer that question? My Honourable friend does not seem to know that the Afridis do not make any distinction between Hindus and Sikhs. They call all of them Hindus. They do not know the difference between the two. Everything that was done, was done through ignorance.

THE HONOURABLE SARDAR SHIVDEV SINGH UBEROI: I am sorry I did not entertain such an opinion about the Afridis as my Honourable friend has. Anyhow, I can say there was no excuse for the Afridis to complain against the conduct of the Sikhs. There was not a single pamphlet issued by any of the Sikh preachers against the Muhammadan community.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: Perhaps the name Dalip Singh, which was the name of the Judge who decided the case influenced the Afridis to think that the Sikhs were also connected with the affair.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA: I may tell my Honourable friend that the Judge who decided the case was a Christian.

THE HONOURABLE SARDAR SHIVDEV SINGH UBEROI: The tribesmen do not know that and there are also many Honourable members here who do not know that the Judge who had decided the case was a Christian. I feel I have elicited useful information from the Honourable the Foreign Secretary, namely, that it is the aim of the political officer to see that the Hindus and Sikhs are sent back to their homes. Having got that useful information, I do not feel the necessity for pressing this Resolution at all. Before I withdraw my Resolution, I would like the Honourable the Foreign Secretary to say one thing. My Honourable friend Lala Ram Saran Das asks me to enquire what reply was given to the Hindu memorial. Of course the Honourable Sir Denys Bray would be in a position to clear the point. After hearing from him on this point, I should like to withdraw the Resolution.

THE HONOURABLE SIR DENYS BRAY: Sir, I am not in a position to say what action has been taken on the Sikh memorial  
5 P.M. for I am not quite sure what memorial is referred to.

I much appreciate the restraint with which the Honourable Mover spoke, and appreciate also his action in asking leave to withdraw his motion. Into the controversy between the Honourable Lala Ram Saran Das and the Honourable and gallant Member from the North-West Frontier Province I do not propose to enter. I have heard, I fear I must say, statements of detail from both the full accuracy of which I gravely doubt.

But there was one remark that fell from my Honourable friend Lala Ram Saran Das's lips which provokes me to say one final word. He suggested, Sir, that the rules of a neighbouring country should see to it that all subjects of his that travelled up through India to his country should keep their mouths from evil speaking, lying and slandering. Sir, the answer we should receive would surely be obvious: that we should first put our own house in order. For myself, I do hope that out of this evil may come good; in dealing with Frontier problem one does well to hold fast to the practical creed and faith of optimism. But this, Sir, is the second occasion within a few years that the Frontier Province has been rent over a blasphemous pamphlet. Does not this evil cry aloud to India to purge herself once and for all of this vile and scurrilous lampooning, so alien to India, so foreign to that dignity which is India's, so opposed to that instinctive reverence for saintliness of life, that



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reverence for holy men of all creeds and castes, which the world hitherto has regarded as amongst the most kindly things in India, as amongst the lessons of tolerance which India has to give? Is it visionary to hope that, once it is realised that scurrilous and blasphemous words, lightly spoken or written down-country whether by Hindu or Muslim, may easily be translated on the Frontier into action which may wreck innocent homes and threaten the whole social system,—is it visionary to hope that outraged India will at last insist that this pestilence shall be stayed for ever?

The Resolution was, by leave of the Council, withdrawn.

THE HONOURABLE THE PRESIDENT: I understand from the Honourable the Leader of the House that Government has no business to place before the Council to-morrow. The Council will therefore now adjourn till Monday, the 12th September at 11 o'clock.

The Council then adjourned till Eleven of the Clock on Monday, the 12th September, 1927.

## COUNCIL OF STATE.

*Monday, 12th September, 1927.*

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The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

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### MEMBER SWORN :

The Honourable Sir John Perronet Thompson, K.C.I.E., C.S.I. (Political Secretary).

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### QUESTIONS AND ANSWERS.

#### CAMPAIGN AGAINST MALARIA.

109. THE HONOURABLE SIR HAROON JAFFER: Will Government please state :

(a) if they have seen the press statement to the effect that Sir Ronald Ross, after his recent Eastern tour, declared that India is not sufficiently advanced in campaigns against malaria ;

(b) what are the present efforts being made to combat malaria on a large scale ; and

(c) whether Government are prepared to entertain a scheme similar to that in progress in Malaya which was so highly commended by Sir Ronald Ross ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :

(a) Government have seen the statement made by Sir Ronald Ross regarding the position in India in respect of combating malaria.

(b) and (c). As the Honourable Member must be aware, Medical Administration and Public Health are now transferred provincial subjects and the duty of undertaking large scale schemes to fight against malaria, whether on the lines in progress in Malay or in some other manner better suited to local conditions, is primarily the duty of Local Governments. A note reviewing the activities of the Government of India in this matter, both before and after the Reforms, the difference in the conditions of Malay and India and possible lines of advance by Local Governments, which has been prepared by the Public Health Commissioner with the Government of India, is being laid on the table of the House.

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### NOTE.

1. Organised administrative effort against malaria in India was seriously begun in 1909 ; but received a check owing to the war and a further check on account of financial

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stringency from 1920 onwards. This early organisation consisted of a Central Advisory Board with provincial malarial committees, and, through these agencies, not only were periodical Conferences held, a Central Malaria Bureau established and a malarial journal (Paludism) published; but, at the same time, a stimulus was furnished to the various provinces to appoint special malaria officers and to commence provincial survey work. At the same time Government of India gave large grants-in-aid to approved provincial schemes.

2. During the great war much of this organisation languished and disappeared; but the Central Malaria Bureau, which was the nucleus of the Central organisation remained, and, in several provinces, the provincial Bureaux with their special officers remained or were revived, thus enabling work to continue, though in a somewhat restricted form.

3. From the Central Malaria Bureau at Kasauli, largely through the influence of Lieutenant-Colonel Christophers, I.M.S.—one of the world's foremost malariologists—proposals have now matured for the creation of a Central Malarial Organisation which is being financed by the Indian Research Fund Association at a cost of over Rs. 2,30,000, recurring and non-recurring, during the present year. A Director and an Assistant Director together with two malariologists for field work and one entomologist have already been appointed, and the services of various officers of the Research Department will be detailed from time to time as necessity arises to assist enquiries. Malarial classes have been established and are meeting at Saharanpur twice yearly. These will shortly be transferred to the new Ross Experimental Malaria Station at Karnal which is now being fitted out in St. Elizabeth Mission buildings since completion of their purchase from the Cambridge Mission. This station will be a rallying point for all scientific malarial work under Government of India.

4. Meanwhile the Indian Research Fund Association has been giving special grants for malaria research. In

1924-25	..	..	Rs. 25,846 were granted for 3 enquiries.
1925-26	..	..	Rs. 45,043 were granted for 8 enquiries.
1926-27	..	..	Rs. 39,494 were granted for 5 enquiries.
1927-28	..	..	Rs. 94,021 were granted for 10 enquiries.

Those for 1927-28 include malarial surveys of Delhi, of Coorg, of Sind, in the Madras Presidency, in Bengal, in Assam, in Peshawar and also laboratory research on malaria and its treatment and on malarial mosquitoes at Kasauli, Lahore and Bombay.

5. Much work is also being done by provincial Malarial Bureaux in provinces like the Punjab, United Provinces and Bengal. At the annual Research Workers' Conference in Calcutta each year provincial public health officers are encouraged to press, where necessary, for the resuscitation or creation of provincial Malarial Bureaux under the charge of special malaria officers. More work is in contemplation by the Central Government; but this is naturally limited for financial reasons and by the absence of trained workers.

6. The aforementioned organisation of a Central Advisory Board and provincial Malarial Committees had many resemblances to that in operation in Malaya whose problem is generally speaking dissimilar from that of India. The Indian problem really only touches it so far as plantation areas are concerned,—more especially in Assam. Boards dealing with an organised and controlled plantation community such as that of the rubber community in Malaya, with only a few modern European settlements, a small number of large native towns, and small indigenous population can establish an effective control with greater ease and certainty than could be done in a huge continent of agriculturists like India. This reason no doubt weighed with Sir Ronald Ross when he recommended the formation of Boards after the Malayan pattern in the tea areas of Assam, and there is nothing to prevent such an excellent suggestion being adopted. The reconstruction, however, of the provincial Malarial Committees or Boards perhaps on broader lines than in

1909, would be a great step forward in provincial malaria control. It should be encouraged and would be welcomed by the Central Malarial Organisation and Government of India.

(Sd.) J. D. GRAHAM,

*The 30th August 1927.*

*Public Health Commissioner with the  
Government of India.*

**THE HONOURABLE MR. G. A. NATESAN :** Having regard to the fact that the victims of malaria are found all over India, in spite of all that has been done, will Government be pleased to take further steps to have a clear grasp of the situation ?

**THE HONOURABLE SIR MUHAMMAD HABIBULLAH :** The Honourable Member will do well to read the note that I am placing on the table before he puts any questions on the subject.

#### PRIZE OF DELHI SCHEME.

110. **THE HONOURABLE SIR HAROON JAFFER :** Will Government please state :

- (a) what progress has been made with the Prize of Delhi scheme ; and
- (b) when the scheme is likely to become a reality ?

**THE HONOURABLE MR. A. C. MCWATTERS :** (a) and (b). The action taken by the Government of India, which was to a great extent based upon the recommendations of the Prize of Delhi Committee, was to place before Local Governments a scheme for the establishment of a Central Art Institute at Delhi. This scheme did not find favour with the majority of Local Governments and in the absence of their co-operation, it has not been found possible to proceed with it for the present. An alternative scheme for the encouragement of Indian Art by providing facilities for decoration of the buildings in New Delhi has just been approved by the Standing Finance Committee.

#### INTRODUCTION OF LEGISLATION FOR THE CONTROL OF BUILDING CONSTRUCTION IN FACTORIES.

111. **THE HONOURABLE SIR HAROON JAFFER :** Will Government please state :

- (a) whether the Provincial Governments have been approached regarding the introduction of legislation for the control of building construction in factories ; and
- (b) what have been the results of such consultation ?

THE HONOURABLE MR. A. C. MCWATTERS : (a) Yes.

(b) The Government of India have been informed by one Local Government that they propose to introduce a Bill in the Legislative Council in due course and by another that they do not intend to take such action at present.

#### ILLICIT DRUG TRADE.

112. THE HONOURABLE SIR HAROON JAFFER : Will Government please state :

(a) if they have seen the report of Sir Malcolm Delevingne before the Advisory Opium Committee of the League of Nations, regarding the increase of the illicit drug trade in India, and the statement of Sir John Campbell that, through negligence of Government, 41 times the legitimate consumption of narcotics was being introduced into India ;

(b) whether they have received the proposals of Sir Malcolm Delevingne which have been adopted by the Opium Commission ; and

(c) what action they propose to take in this matter of the illicit drug trade ?

THE HONOURABLE MR. A. F. L. BRAYNE : (a) The facts are not as suggested. Sir Malcolm Delevingne's Memorandum drew attention to the unsatisfactory nature of the control over the drug traffic in manufacturing countries generally, and incidentally referred to the extent to which cocaine was being smuggled into India. Sir John Campbell, in endorsing Sir Malcolm Delevingne's remarks, estimated that the cocaine that was smuggled into India was about 41 times the licit demand. Neither of the speakers complained of negligence on the part of the Indian Government. Their complaint was against the Governments of countries in which cocaine was manufactured. A press communiqué was issued by the Central Board of Revenue on 3rd February 1927, explaining how Sir John Campbell's observations had been misunderstood owing to the way in which they were condensed in a Reuter's telegram.

(b) If the proposals that the Honourable Member has in mind are those contained in the Resolution of the Opium Advisory Committee dated 1st February 1927, recommending certain lines of investigation and suggesting certain specific penalties against smugglers, the answer is in the affirmative.

(c) In India itself (apart from raw opium and hemp) the only dangerous drugs manufactured are certain opium alkaloids that are manufactured at Ghazipur ; and they are issued in India only for strictly medicinal purposes. All cocaine used in India is imported. The importation of dangerous drugs into India is subject to the closest control, but, owing to their small bulk and high value, the illicit traffic cannot be successfully checked except with the active co-operation of the Governments of manufacturing countries—which was precisely the point made by Sir Malcolm Delevingne and Sir John Campbell at Geneva.

INCONVENIENCES TO HAJ PILGRIMS.

113. THE HONOURABLE SIR HAROON JAFFER: Will Government please state :

(a) if the continued inconveniences to the *Haj* pilgrims, referred to in the Report of the Protector of Pilgrims for 1926, have been officially reported to them ; and

(b) what action is being taken to have these inconveniences removed ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :  
(a) and (b). If the Honourable Member will be good enough to specify the report and the difficulties he has in mind, I shall endeavour to secure the information that he requires.

SUPPLY OF EXHIBITS TO THE INDIAN SECTION OF THE MAMMALS IN THE SOUTH KENSINGTON MUSEUM IN LONDON.

114. THE HONOURABLE SIR HAROON JAFFER: Will Government please state :

(a) if they have supplied any exhibits to the Indian section of the Mammals in the South Kensington Museum in London ; and

(b) if any requests for representative exhibits have been received and not complied with ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :  
(a) No.

(b) No.

ESTABLISHMENT OF AGRICULTURAL RESEARCH STATIONS IN INDIA.

115. THE HONOURABLE SIR HAROON JAFFER: Will Government please state :

(a) whether any agricultural research station exists in India ; if not, do Government intend to establish one ; and

(b) whether Government is able to state how many such stations exist in other parts of the British Empire ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :

(a) Yes.

(b) No ; but there are many.

ABOLITION OF FORCED LABOUR IN INDIA.

116. THE HONOURABLE SIR HAROON JAFFER: Will Government please state :

(a) whether Government have totally abolished forced labour in India ;

(b) if not, why no action has been taken in this direction ;

(c) was Government a signatory to the Slavery Convention recently passed at Geneva ; and

(d) if so, what action they intend taking to stamp out forced labour ?

**THE HONOURABLE MR. S. R. DAS :** Forced labour for certain specified public purposes, chiefly in connection with Forestry and Irrigation exists in India and has legal sanction. In almost all such cases the labour is for the direct benefit of the man performing it, who either receives actual payment or remuneration in the form of special rights. Forced labour for private purposes has no legal sanction. It survives only in parts of the Madras Presidency and Bihar and Orissa, where progressive steps are being taken to eradicate it. The Slavery Convention was signed on behalf of India, subject to certain reservations.

**EXHIBITION OF INDIAN PRODUCTS AT THE PUBLIC GALLERIES OF THE IMPERIAL INSTITUTE.**

**117. THE HONOURABLE SIR HAROON JAFFER :** Will Government please state :

(a) whether it is a fact that India's products exhibited at the Public Galleries of the Imperial Institute are not up to date ; and

(b) if so, why, and what steps have been, or are being, taken in the matter ?

**THE HONOURABLE SIR GEOFFREY CORBETT .** (a) and (b). Previous to 1923 the Government of India subscribed £400 a year for the scientific and technical work of the Institute and £1,000 a year for the upkeep of the galleries. They now make a total contribution of £1,200. Of this, £1,000 represents the subscription to the Imperial Mineral Resources Bureau which has since been amalgamated with the Institute. But the subscription to the galleries was discontinued in 1923, on the ground that they were of little value. Recently, however, the galleries have been re-organised, and the Indian exhibit has been re-arranged and greatly improved by the Indian Trade Commissioner, with the voluntary assistance of the technical departments of the Government of India and the Local Governments, as well as commercial bodies. Many of the Wembley exhibits were also transferred to the galleries. It has, however, been represented that these voluntary efforts are handicapped by want of funds, and a proposal to renew the annual subscription is now under consideration.

**RESOLUTION *re* UTILIZATION OF INTEREST FROM THE DEPOSITS IN THE POSTAL SAVINGS BANKS AND GOVERNMENT SECURITIES BELONGING TO MUSSALMANS FOR THE IMPROVEMENT OF MUSLIM EDUCATION.**

**118. THE HONOURABLE SIR HAROON JAFFER :** Will Government be pleased to state :

(a) what steps they have taken to give effect to my Resolution, passed by the Council on the 16th February last, regarding the utilization of interest from the deposits in the Postal Savings Banks and Government securities belonging to Mussalmans for the improvement of Muslim education ; and

(b) if no steps have so far been taken, then when they intend to take steps ?

**THE HONOURABLE MR. A. F. L. BRAYNE :** The Government of India have made an announcement that they are willing to make arrangements for

facilitating the payment into a special fund (or funds) which they are satisfied has (or have) the support of a representative body or bodies of Muslims of sums representing the interests which is earned upon moneys standing to the credit of depositors in the Post Office Savings Banks which the individual depositors do not wish to claim for themselves. The first step is therefore for Muslims to make arrangements for establishing such fund or funds and then for the individual depositors to give the requisite direction. Local Governments and Minor Administrations are being informed of this decision.

As regards interest on Government securities the Government of India do not propose to extend the offer of similar facilities beyond the Post Office Savings Bank deposits, until they have gained some experience of the working of the arrangement in regard to Savings Banks.

**TAKING OF *Taboots* OVER THE SANGAM BRIDGE ON WELLESLEY ROAD, POONA.**

119. THE HONOURABLE SIR HAROON JAFFER : Will Government be pleased to state :

(a) with regard to my question No. 140, asked on the 7th March last, have the Government now received any reference from the Bombay Government regarding the continuance of the present practice of taking *Taboots* over the Sangam Bridge on Wellesley Road ;

(b) have they passed any orders on the subject ;

(c) if so, will they place them on the table ; and

(d) if not, do they intend to make independent inquiries before any orders are passed on the report received from the Agent, Great Indian Peninsula Railway ?

THE HONOURABLE SIR GEOFFREY CORBETT : Government have received no reference from the Government of Bombay, but they understand from the Agent, Great Indian Peninsula Railway, that that Government has the subject under consideration.

**RESOLUTION *re* CONTROL OF THE CRAZE FOR MEDICINAL DRUGS.**

120. THE HONOURABLE SIR HAROON JAFFER : Will Government be pleased to state what steps they have taken on my Resolution, regarding the control of the craze for medicinal drugs, adopted by this Council on the 9th March last ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : A copy of the Resolution referred to by the Honourable Member together with a copy of the Council of State proceedings relating to it was forwarded to Local Governments for eliciting opinion, and replies of some of the Local Governments are still awaited.

**RESOLUTION *re* TREATMENT OF TUBERCULOSIS.**

121. THE HONOURABLE SIR HAROON JAFFER : Will Government be pleased to state what steps they have taken on my Resolution, regarding the treatment of tuberculosis, passed by this Council on the 7th March last ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : A copy of the Resolution referred to by the Honourable Member and the



discussion thereon were circulated to all Local Governments for opinion last March.

The question of holding a conference to consider the problem of tuberculosis will be decided after certain replies which are still outstanding, have been received.

**EXPULSION OF JAGANNATH PRASAD SINGH, MUHAMMAD YASIN AND MUHAMMAD UMAR FROM THE BARRACKPORE CANTONMENT AREA.**

122. THE HONOURABLE SIR HAROON JAFFER : Will Government be pleased to state :

(a) whether one Jagannath Prasad Singh and his two co-workers, Muhammad Yasin and Muhammad Umar, were excluded from the Barrackpore Cantonment area, on the 23rd December, 1921, for taking part in the non-co-operation movement ;

(b) are they still strictly prohibited from re-entering the Cantonment area ;

(c) how many persons are still excluded from different Cantonments in India ; and

(d) do Government intend to allow such persons to re-enter the Cantonments ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (a) Yes.

(b) No. Muhammad Umar and Muhammad Yasin have already been permitted to re-enter the Cantonment. Jaggannath Prasad Singh has not yet furnished the undertaking on which permission to return was made dependent.

(c) As far as the Government are aware there are not more than 15 persons (including Jaggannath Prasad Singh) against whom expulsion orders are in force and it is possible that some of these orders may already have been withdrawn by the local authorities.

(d) Government are prepared to consider on its merits any individual case that may be brought to their notice.

**CONFLICT OF DECISIONS OF DIFFERENT HIGH COURTS REGARDING THE ENFORCEMENT OF THE RIGHT OF PRE-EMPTION.**

123. THE HONOURABLE SIR HAROON JAFFER : (a) Has the attention of Government been drawn to discrepant rulings by different High Courts on the question whether it is necessary to the enforcement of the right of pre-emption that the pre-emptor should be a Muhammadan ?

(b) Do Government intend to take steps to amend the law so as to remove the conflict of opinion ?

THE HONOURABLE MR. H. G. HAIG : (a) The attention of Government has not hitherto been drawn to such discrepant rulings.

(b) Government are not at present aware of any necessity for amending the law.

THE HONOURABLE SIR HAROON JAFFER : I should like, Sir, to ask a supplementary question. I would refer my Honourable friend to "Muhammadan Law" by Mr. D. F. Mulla, page 160, section 184, which says this.....

THE HONOURABLE THE PRESIDENT : The Honourable Member is giving information, he is not asking for it.

THE HONOURABLE SIR HAROON JAFFER : May I point out.....

THE HONOURABLE THE PRESIDENT : Order, order. He should do that outside the House.

RESERVATION OF FIRST AND SECOND CLASS COMPARTMENTS ON RAILWAYS.

124. THE HONOURABLE SIR HAROON JAFFER : Will Government be pleased to state whether a first or second class railway compartment, reserved for a journey of long distance, is reserved for the whole journey, night and day, or only during the night ?

THE HONOURABLE SIR GEOFFREY CORBETT : For the whole journey, Sir, night and day.

TOTAL STRENGTH OF THE JUDGES IN THE BOMBAY HIGH COURT.

125. THE HONOURABLE SIR HAROON JAFFER : Will Government be pleased to state :

(a) the usual total strength of the High Court Judges in the Bombay Presidency ;

(b) is the strength short at present ;

(c) if so, why ; and

(d) how many Judges are Muslims ?

THE HONOURABLE MR. H. G. HAIG : (a) Eight permanent Judges (including the Chief Justice).

(b) No.

(c) Does not arise.

(d) One.

AWARD TO TINDAL EBRAHIM OF THE MEDAL OF THE ROYAL HUMANE SOCIETY.

126. THE HONOURABLE SIR HAROON JAFFER : With reference to the replies given to the unstarred questions Nos. 60 and 62, asked in the Legislative Assembly on the 31st January last, will Government be pleased to state :

(a) whether Tindal Ebrahim of Cutch Mandvi has been recommended for an award of the Royal Humane Society for saving human lives during the "Vita" tragedy ;

(b) if not, why not ;

(c) what action Local Governments have taken to improve the existing facilities for the embarkation and disembarkation of passengers at ports where ships have to lie in a roadstead ; and

(d) if no action has so far been taken, then when will it be taken ?

THE HONOURABLE MR. H. G. HAIG : (a) No.

(b) Enquiries made by the Government of India in the matter did not indicate that the services rendered by Tindal Ebrahim were such as would justify a recommendation being made to the Royal Humane Society.

(c) The Local Governments were asked by the Government of India to consider whether any action could usefully be taken to improve the existing facilities for the embarkation and disembarkation of passengers at ports where ships cannot come alongside the shore. They were also asked to tighten up and overhaul the existing rules for the prevention of overcrowding and overloading of boats carrying passengers and to enforce these rules strictly. It was further suggested that in ports where there is considerable passenger traffic, steam or motor launches should be provided for the embarkation and disembarkation of passengers. An examination of the existing arrangements shows that adequate rules for the licensing of boats and prevention of overloading and overcrowding of passengers already exist. The Local Governments have instructed Port Officers, wherever necessary, to see that these rules are effectively administered. The feasibility of providing steam or motor launches at ports where there is considerable passenger traffic is being examined. In some of the ports the construction of landing places or piers is being taken up. But, as the Honourable Member is doubtless aware, embarkation and disembarkation in an open roadstead, must in anything but very fine weather, always be inconvenient and uncomfortable. This is an inevitable incident of sea travelling and is not confined to the coasts of India.

(d) Does not arise.

NUMBER OF POSTAL SUPERINTENDENTS IN THE BOMBAY PRESIDENCY.

127. THE HONOURABLE SIR HAROON JAFFER : Will Government be pleased to state :

(a) how many Postal Superintendents there are in the Bombay Presidency ;

(b) how many of them are Muslims ;

(c) when those Muslims were appointed ; and

(d) have Government advertised recently for applications for a fresh appointment ?

THE HONOURABLE MR. A. C. McWATTERS : (a) 24.

(b) 1.

(c) 15th August 1913.

(d) The Postmaster-General advertised for a candidate from the Deccan.

NUMBER OF MUSLIMS APPOINTED ON SALARIES OF RS. 100 AND OVER BY THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY, SINCE APRIL 1927.

128. THE HONOURABLE SIR HAROON JAFFER : Will Government be pleased to state :

(a) how many appointments of Rs. 100 and over have been filled by the Commissioner of Income-tax, Bombay Presidency, since April 1927 ; and

(b) how many such appointments were given to Muslims ?

**THE HONOURABLE MR. A. F. L. BRAYNE:** (a) 713 including six posts filled up by promotion from the office staff.

(b) 3.

**PROTECTION OF HINDUS RESIDING IN THE TRIBAL AREAS IN THE NORTH-WEST FRONTIER PROVINCE.**

**129. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS:** Will the Government kindly state :

- (a) what is estimated, at the present time, to be the total population of the Hindus, in each of the political agencies of the tribal area in the North West Frontier Province ;
- (b) how many of the Hindus in each of the political agencies of Malakand, Khyber, Kurram, Tochi and South Waziristan, have been forced to leave their homes in the tribal area and seek refuge in the British districts ;
- (c) whether all the Hindus residing in the tribal area follow the profession of trade, shopkeeping and money-lending ? Do any of them follow any other profession or occupation ; if so, what other occupation do they have ;
- (d) what measures for the protection of the Hindus, residing in the tribal area, are adopted by Government or proposed to be adopted by Government in the future ;
- (e) whether the Mullahs, who incited the tribal Pathans against the Hindus, were British subjects, or residents of the tribal area ?

**THE HONOURABLE SIR JOHN THOMPSON:** (a) An endeavour is being made to compile the information, and the results, which can of course be approximate only, will be communicated to the Honourable Member. It is believed that the total is somewhere in the neighbourhood of 16,000.

(b) About 500 from the Khyber Agency. There were no evacuations elsewhere over the Rajpal case.

(c) Practically all, though a very few own a little land.

(d) and (e). I would refer the Honourable Member to the Foreign Secretary's speech in this House on the 7th instant.

**DIPLOMATIC AND CONSULAR AGENTS APPOINTED BY THE GOVERNMENT OF INDIA IN CENTRAL ASIA, KHORASAN, PERSIA AND ARABIA.**

**130. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS:** Will the Government kindly state :

- (a) the places at which the Government of India have diplomatic and consular agents in Central Asia, Khorasan, Persia and Arabia ;
- (b) what was the total value of merchandise imported to and from Central Asia, Khorasan, Persia and Arabia from and to India in the years 1925-26 and 1926-27 ; and

- (c) how many diplomatic and consular agents are employed in Central Asia, Khorasan, Persia and Arabia, and how many of them are Indians ?

THE HONOURABLE SIR JOHN THOMPSON : (a) Kashgar, Meshed, Bushire, Bunder Abbas, Sistan, Birjand, Karman, Mohammerah, Ahwaz, Duzdap, Muscat and Jeddah.

(b) A statement has been laid on the table furnishing the information available on this point.

(c) 14, of whom 2 are Indians.

Statement showing the total value of merchandise imported *by sea* to and from Persia and Arabia from and to India during 1925-26 and 1926-27 (referred to in Sir John Thompson's reply to Question No. 130 in the Council of State meeting of the 12th September 1927).

Countries.	Imports to		Imports from	
	1925-26.	1926-27.	1925-26.	1926-27.
	Figures in Lakhs of Rs.		Figures in Lakhs of Rs.	
Persia (including Khorasan) . . . . .	236	250	215	198
Arabia . . . . .	178	181	54	45

N. B.—Similar figures of trade with Central Asia, the figures of trade *by land* with Persia and separate figures for Khorasan, which is a province of Persia, are not available.

#### DISCHARGE OF INDIAN EMPLOYEES OF THE IRAQ GOVERNMENT.

131. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state whether it is a fact that the services of the Indian employees under the Iraq Government are being rapidly dispensed with ? If so, will Government kindly state who are displacing these Indians, and why the services of these Indians are being dispensed with ?

THE HONOURABLE SIR JOHN THOMPSON : Yes, Sir. It is understood that the policy followed by the Iraq Government is gradually to reduce the number of foreign officials, including Indians, and to replace them by qualified Iraqis when available.

#### PROTECTION OF THE INTERESTS OF INDIANS RESIDENT IN BRITISH COLONIES IN EAST AFRICA.

132. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : In view of the movement set on foot for the federation of all British Colonies in East Africa, will the Government kindly state what action the Government of India propose to take for the protection of the interests of Indians resident in those Colonies ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** The Honourable Member is referred to the reply given by me to the Honourable Mr. Kumarsankar Ray Chaudhury's question No. 34.

**TRAINING OF INDIANS FOR COMMISSIONS IN THE ROYAL INDIAN NAVY.**

**133. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Will the Government kindly state what steps the Government have taken or propose to take for the purpose of giving necessary training to Indians, so as to enable them to get commissions in the newly-established Royal Indian Navy ?

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF :** The selection of boys for executive officers will be made generally on the lines recommended in paragraph 8 of the Report of the Departmental Committee on the re-organization of the Royal Indian Marine. The Admiralty have already agreed to train Cadets, both British and Indian, and it is hoped to inaugurate examinations in India and in England next year. As regards engineer officers, the Government of India are at present in correspondence with the Secretary of State about recruitment for the current year. The rules for future recruitment are now under consideration.

**PURCHASE OF RAILWAY MATERIALS FOR STATE RAILWAYS.**

**134. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Will the Government kindly state what was the total value of railway material, including locomotive engines, wagons, etc., purchased for the Government of India, in the years 1924-25, 1925-26 and 1926-27 ? What was the value of such material manufactured in India, in America, in England, and in other countries of Europe, respectively ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** By the term ' railway material purchased for the Government of India ' it is understood that the Honourable Member refers to material purchased for the State-worked railways.

The figures I am able to give represent the cost of imported and indigenous material purchased, excluding the value of coal, stone, bricks, lime, etc., the purchases of which are however confined to Indian material.

Year.	Imported.	Indian.
1924-25 . . . . .	Lakhs 690½	Lakhs 494
1925-26 . . . . .	„ 797	„ 535½
1926-27 . . . . .	„ 718½	„ 738½

The country of origin of the imported material is not known but the report of the India Store Department, London, for the year 1925-26, states that the total purchases in America, in that year, amounted to £164,456 and on the Continent of Europe to £735,563 and that the principal orders abroad were for railways. Purchases by the Department, for railways, from all countries amounted to £2,902,792 during the year.

**RATES OF FREIGHT ON COTTON ON THE NORTH WESTERN RAILWAY.**

**135. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** (a) Will the Government kindly state what is the rate of freight on cotton on the North Western Railway, when it is exported to Karachi and when it is transported

to Ahmedabad or Bombay? Is it a fact that some concession in rates is given when cotton is exported to Karachi?

(b) Is it also a fact that a higher rate of freight is charged on the Bombay, Baroda and Central India and the Great Indian Peninsula Railways? Do Government propose to take any steps to remove this differentiation in rates?

THE HONOURABLE SIR GEOFFREY CORBETT: (a) Cotton is carried over the North Western Railway at Class IV rates and a reduction of 6 pies a maund is made from these rates for cotton booked to Karachi at owners risk which does not apply to cotton booked to other stations. The reason for this reduction is that the North Western Railway rates to Karachi are competitive with rates to Bombay.

(b) Actually the charges per maund per mile over the Bombay, Baroda and Central India and the Great Indian Peninsula Railways for cotton booked to Bombay from the North Western Railway cotton areas are lower than those for cotton booked to Karachi and Government do not consider any action necessary.

#### RATES OF FREIGHT FOR WHEAT ON THE NORTH WESTERN RAILWAY.

136. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Will the Government kindly state whether it is a fact that rates of railway freight on the North Western Railway for wheat are lower when they are exported to Karachi and higher when they are transported to parts of the country east of the Punjab? Do Government propose to take any steps to remove this differentiation in rates?

THE HONOURABLE SIR GEOFFREY CORBETT: The North Western Railway rates for wheat to Karachi and to stations in the East of the Punjab are the same, except in the case of a comparatively small number of stations, from which rates to Karachi are lower than the general grain rate on account of competition with other Railways. The Government do not propose to take any steps to remove this differentiation.

#### EXPENDITURE ON THE CONSTRUCTION OF THE BRITISH LEGATION IN KABUL.

137. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Will the Government kindly state whether it is a fact that something like 26 lakhs of rupees has so far been spent on the construction of the British Legation in Kabul from Indian revenues?

THE HONOURABLE SIR JOHN THOMPSON: Yes, Sir; the figure is about 30 lakhs.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: May I ask a supplementary question, Sir?

THE HONOURABLE THE PRESIDENT: It depends on the question.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: May I ask whether this amount will be realised from the Imperial Government?

THE HONOURABLE THE PRESIDENT: The Honourable Member knows perfectly well that he cannot ask that question. He is now attempting to put as a supplementary question part of the original question which I disallowed.

IMPORT DUTY ON VANASPATHI OR ARTIFICIAL GHEE.

138. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state what is the amount of import duty at present levied on the import of Vanaspathi or artificial ghee into this country ? Have Government under consideration the question of putting a prohibitive import duty on the import of this commodity ?

THE HONOURABLE SIR GEOFFREY CORBETT : The import duty on "vegetable products" which include such articles as vegetable ghee and vegetable fat is 15 per cent. on a tariff valuation of Rs. 46 per cwt.

The answer to the second part of the question is in the negative.

VALUE AND AMOUNT OF ARTIFICIAL GHEE IMPORTED IN THE YEARS 1924-25, 1925-26 AND 1926-27 RESPECTIVELY.

139. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state what has been the value and amount of artificial ghee imported into India in the years 1924-25, 1925-26 and 1926-27, respectively ?

THE HONOURABLE SIR GEOFFREY CORBETT : The information is not available, as imports of artificial ghee have not been separately recorded in the past. Imports of "vegetable products", which include such articles as vegetable ghee and vegetable fat, are now being shown separately in the Seaborne Trade Accounts from April 1927, and amounted up to the end of July to about 72,000 cwt. valued at about 31½ lakhs of rupees.

EXCISE DUTY COLLECTED ON KEROSENE OIL AND PETROL PRODUCED IN INDIA, ETC.

140. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state what has been the amount of excise duty collected on kerosine oil and petrol, produced in India, during the years 1924-25, 1925-26 and 1926-27 ? What has been the value and amount of kerosine oil and petrol imported into this country during these years ?

THE HONOURABLE MR. A. F. L. BRAYNE : A statement is laid on the table.

*Amount of excise duty collected on kerosine oil and motor spirit produced in India during the three years ending 1926-27.*

	1924-25.	1925-26.	1926-27.
	Rs.	Rs.	Rs.
Kerosine oil . . . . .	98,39,000	97,88,000	1,04,89,000
Motor spirit . . . . .	78,86,000	76,82,000	97,88 000

*Value and quantity of kerosine oil and petrol imported into India during the three years ending 1926-27.*

	1924-25.		1925-26.		1926-27.	
	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.
	Rs.	Gals.	Rs.	Gals.	Rs.	Gals.
Kerosine oil . . . . .	4,77,50,710	71,979,920	5,16,77,156	79,221,643	4,29,69,062	63,686,292
Motor spirit . . . . .	10,555	3,500	7,042	5,641	13,951	3,844



**GRANT OF A CONCESSION IN FARES FOR THIRD CLASS PASSENGERS ON THE EASTERN BENGAL RAILWAY.**

141. THE HONOURABLE RAI NALININATH SETT BAHADUR: (a) Is it a fact that the Eastern Bengal Railway has granted concession in fares in other sections but have not done so on the Dacca section, in respect of third class passengers?

(b) If so, will the Government be pleased to state the reasons?

THE HONOURABLE SIR GEOFFREY CORBETT: (a) The concession in respect of third class fares given by the Eastern Bengal Railway applies to the whole system including the Dacca section.

(b) Does not arise.

**RAILWAY TERMINUS IN THE CENTRE OF CALCUTTA.**

142. THE HONOURABLE RAI NALININATH SETT BAHADUR: (a) In what stage is the proposal for a railway terminus in the centre of Calcutta at present?

(b) Have the officers especially employed for the purpose of enquiring into the feasibility of the proposal submitted their report?

(c) If the answer to (b) be in the affirmative, will the Government be pleased to lay a copy of the report on the table?

(d) Has the proposal been sanctioned by the Railway Board? If so, when do Government propose to give effect to the project?

THE HONOURABLE SIR GEOFFREY CORBETT: There is no proposal under consideration for a railway terminus in the centre of Calcutta. In connection with proposals for the electrification of suburban lines entering Calcutta the possibility of extending the railway further into the urban area is under examination, but the scheme has not yet advanced to a stage at which it is possible for Government to make a statement or to lay papers.

**TRANSFER OF THE RAILWAY MARSHALLING YARD FROM CHITPUR TO BELGHURRIAH.**

143. THE HONOURABLE RAI NALININATH SETT BAHADUR: Is there any proposal for the removal of the Railway Marshalling Yard from Chitpur in Calcutta to somewhere else? If so, when is the proposal likely to materialise?

THE HONOURABLE SIR GEOFFREY CORBETT: A proposal to transfer the yard from Chitpur to Belghurriah is under consideration. The plans of the yard at Belghurriah are being prepared.

**CONTRIBUTION BY THE GOVERNMENT OF INDIA TOWARDS THE COST OF THE CONSTRUCTION OF THE HOWRAH BRIDGE.**

144. THE HONOURABLE RAI NALININATH SETT BAHADUR: (a) Is it a fact that the Government of India agreed to contribute towards the cost of the construction of the Howrah bridge at Calcutta only in case it was decided to have a cantilever bridge and that the Government of India refused to contribute anything in case the said bridge was of any other type?

(b) If so, will the Government be pleased to state the reasons?

THE HONOURABLE MR. A. F. L. BRAYNE: (a) The answer is in the negative. The Government of India were unable to make a contribution.

towards the cost of a bridge of any type on the ground that this is a matter of provincial concern.

(b) Does not arise.

NUMBER OF HINDU UNDIVIDED FAMILIES EXEMPTED FROM SUPER-TAX.

145. THE HONOURABLE RAI NALININATH SETT BAHADUR : (a) Will the Government kindly state the number of Hindu undivided families who got the benefit from exemption of super-tax, on account of their income ranging from Rs. 50,001 to Rs. 75,000 per year during the years 1924-25, 1925-26 and 1926-27 ?

(b) What would have been the total amount of super-tax that would have been realised from families referred to in (a) above, had they been assessed at the rate of one anna in the rupee of their income during the said three years ?

NUMBER OF HINDU UNDIVIDED FAMILIES IN BENGAL GOVERNED BY THE DAYABHAGA SCHOOL EXEMPTED FROM SUPER-TAX.

146. THE HONOURABLE RAI NALININATH SETT BAHADUR : (a) Will the Government kindly state the number of Hindu undivided families in Bengal governed by the Dayabhaga School, who got the benefit from exemption of super-tax, on account of their income ranging from Rs. 50,001 to Rs. 75,000 per year during the years 1924-25, 1925-26 and 1926-27 ?

(b) What would have been the total amount of super-tax that would have been realised from families, referred to in (a) above, had they been assessed at the rate of one anna in the rupee of their income during the said three years ?

THE HONOURABLE MR. A. F. L. BRAYNE : I will reply to questions Nos. 145 and 146 together. Separate statistics of such tax-payers are not kept and the information is thus not available. Government will however consider whether it is possible without undue trouble to collect the information which the Honourable Member desires.

AMOUNT OF INCOME-TAX REALISED ON INTEREST ON GOVERNMENT SECURITIES, ETC.

147. THE HONOURABLE RAI NALININATH SETT BAHADUR : Will the Government kindly state :

- (a) the amount realised as income-tax on interest on Government securities during the years 1924-25, 1925-26 and 1926-27 ;
- (b) the amount of refund claimed and allowed to persons for not being assessable to income-tax during the said three years ; and
- (c) the amount of refund claimed and allowed to persons for being assessable at a lower rate during the said three years ?

THE HONOURABLE MR. A. F. L. BRAYNE : I place a statement on the table for the past two years. Complete information for 1926-27 is not available.

*Statement showing the amount of tax realised on interest on Government securities and refunds granted for the years 1924-25 and 1925-26.*

	1924-25.	1925-26.
	Rs.	Rs.
(a) Gross tax collected on interest on Government securities.	34,55,723	40,46,020
(b) Refunds* allowed to persons for not being assessable.	2,52,247	3,13,513
(c) Refunds allowed to persons for being assessable at lower rate.	1,59,486	1,89,423

\* This however does not include persons with incomes of less than Rs. 2,000 or less than Rs. 40,000 a year who may have obtained anticipatory certificates under the procedure laid down in paragraph 58 on page 113 of the Income-tax Manual, Volume I.

#### NUMBER OF HOLDERS OF GOVERNMENT SECURITIES LIABLE TO PAY INCOME-TAX.

148. THE HONOURABLE RAI NALININATH SETT BAHADUR : (a) What is the number of holders of Government securities who are liable to pay income-tax ?

(b) What are the safeguards in the system of the administration to ensure relief to the holders of such securities who are either not liable to tax or are only liable to pay at a lower rate ?

THE HONOURABLE MR. A. F. L. BRAYNE : (a) The Government have no information.

(b) The safeguards are those provided by section 48 of the Indian Income-tax Act and the executive instructions issued on page 113 of the Income-tax Manual, under which anticipatory exemption certificates are issued by Income-tax Officers.

#### ASSESSMENTS TO INCOME-TAX MADE BY THE INCOME-TAX DEPARTMENT IN CALCUTTA DURING THE YEARS 1924-25, 1925-26 AND 1926-27.

149. THE HONOURABLE RAI NALININATH SETT BAHADUR : In how many cases did the Income-tax Department in Calcutta make assessments during the years 1924-25, 1925-26 and 1926-27 :

(a) disbelieving the returns filed by the parties and their statements and proofs ; and

(b) on an income taken at a figure higher than that in the return filed, the parties having in the opinion of the Income-tax Officer either failed to appear at the hearing or failed to comply with notices to produce evidence ?

THE HONOURABLE MR. A. F. L. BRAYNE : Information has been called for and will be furnished to the Honourable Member in due course.

#### EXPENDITURE ON THE ROYAL COMMISSION ON AGRICULTURE, ETC.

150. THE HONOURABLE RAI NALININATH SETT BAHADUR : (a) What is the estimated cost of the Royal Commission on Agriculture ?

(b) When are the labours of the Commission expected to be completed and their Report expected to be published ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :**

(a) The Honourable Member is referred to the reply given to Mr. Sarabhai Nemchand Haji in the Legislative Assembly on the 25th March 1927.

(b) The Government of India are not yet in a position to say definitely when the labours of the Royal Commission on Agriculture will be completed and their Report published.

**THE HONOURABLE THE PRESIDENT :** The Honourable Mr. Ratansi Morarji.

**THE HONOURABLE RAI BAHADUR LALA RAMSARAN DAS :** Sir, I have been asked by the Honourable Member to put questions on his behalf.

**THE HONOURABLE THE PRESIDENT :** The Honourable Rai Bahadur Lala Ram Saran Das.

#### REORGANISATION OF THE ARMY IN INDIA.

151. **THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS** (on behalf of the Honourable Mr. Ratansi D. Morarji) : (a) (i) Is there any truth in the statement, which has been circulated by the Press, that a scheme to reorganise the Army in India is under consideration, and (ii) that there have been differences of opinion on the subject between the War Office and the Government of India ?

(b) Is the scheme designed to make India a military base for Imperial Forces similar to the naval base at Singapore ?

(c) Is it also proposed to reduce the Indian Army in size and maintain it as a territorial force for purposes of internal security only ?

(d) Is it true that the proposed visit of the Secretary of State for War to the Indian Frontier is in connection with the settlement of differences over the matters referred to above ?

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF :** (a) I do not know to what statements exactly the Honourable Member refers, but there is no foundation for either of the suggestions in his question.

(b) to (d). These parts of the question do not arise.

#### REORGANISATION OF THE ARMY IN INDIA.

152. **THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS** (on behalf of the Honourable Mr. Ratansi D. Morarji) : Will the Government lay the whole correspondence, on the subject, on the table of the Council of State ? Or, if that is not possible, indicate its own attitude towards the proposals referred to in the preceding questions ?

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF :** In view of my answer to the previous question, this question does not arise.

#### RECOMMENDATIONS OF THE LEE COMMISSION WITH REGARD TO THE INDIANISATION OF THE IMPERIAL POLICE SERVICE.

153. **THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** Will the Government be pleased to state how far the recommendations of the Lee Commission have been given effect to with regard to the question of the Indianisation of the Imperial Police Service ?

(c) The principles governing recruitment will be found in the rules which I am furnishing to the Honourable Member.

**RECRUITMENT TO IMPORTANT BRANCHES OF IMPERIAL SERVICES ON A COMMUNAL BASIS.**

159. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE : Is it a fact that, in the recruitment of members to some of the important branches of Imperial Services, the efficiency question is overlooked and the principle of recruitment on a communal basis is favoured ?

THE HONOURABLE MR. H. G. HAIG : Efficiency is certainly not overlooked, but appointments are not made solely on the results of competitive examination. The principles followed in the matter are fully explained in Sir Alexander Muddiman's speech of the 2nd March 1925 in this House, to which I would refer the Honourable Member.

**DIFFERENCE WITH REGARD TO RANK, EMOLUMENTS AND DESIGNATION BETWEEN AN OFFICER OF AN IMPERIAL SERVICE AND AN OFFICER PROMOTED TO THE IMPERIAL SERVICE.**

160. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE : Will the Government be pleased to state the difference, with regard to rank, emoluments and designation between an officer of an Imperial Service and an officer promoted to the rank of the Imperial Service ?

THE HONOURABLE MR. H. G. HAIG : There is no difference of rank, or, except in the case of the Indian Civil Service, of designation. The initial pay of promoted officers on the time-scale of the all-India Service is regulated by special rules, and thereafter they draw pay on the same scale as directly recruited officers.

**USE OF THE LETTERS "I. C. S." BY AN OFFICER PROMOTED TO AND CONFIRMED IN THE INDIAN CIVIL SERVICE.**

161. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE : (a) Is it a fact that a member of the Provincial Civil Service always remains a member of the Provincial Civil Service, even when he is promoted to and confirmed in the rank of the Indian Civil Service and is not entitled to use the three letters "I. C. S." ?

(b) Is it a fact that members in other branches of Provincial Services, such as Educational, Medical and Police Services, etc., can use the respective denominations of different branches of the Imperial Services when they are promoted and confirmed in their respective Imperial grades, as also when they are appointed to act or officiate therein ?

(c) If the answers to (a) and (b) are in the affirmative, will the Government be pleased to state the reasons for the discrimination ?

(d) Do Government propose to enable the members of the Provincial Civil Service to use the three letters "I. C. S." when promoted to and confirmed in the grade of the Indian Civil Service ? If not, why not ?

THE HONOURABLE MR. H. G. HAIG : (a) A member of the Provincial Civil Service promoted substantively to a listed Indian Civil Service post has

the status of an officer of an all-India service, though he does not actually become a member of the Indian Civil Service.

(b) The position is correctly stated so far as officers promoted substantively to one of the Services in question are concerned. Those officiating only in posts borne on the cadre of an all-India Service are not entitled to style themselves members of the Service.

(c) Recruitment to the Indian Civil Service is governed by special provisions of the Government of India Act, which do not provide for appointment to the Service by promotion but prescribe the system of listed posts, under which officers of the Provincial Civil Services are appointed by Local Governments to posts borne on the cadre of the Service.

(d) Government do not propose to take the action suggested, which would involve not only the legal difficulty explained in my answer to part (c) but also difficulties in regard to pension and the Indian Civil Service Family Pension Fund.

#### CONVEYANCE BY SPECIAL TRAINS OF INWARD FOREIGN MAILS FROM BOMBAY.

162. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE : (a) Will the Government be pleased to state whether it is a fact that special trains are provided for the conveyance of inward foreign mails from Bombay to various parts of India ?

(b) If the answer to (a) be in the affirmative, will the Government be pleased to state :

(i) what is the total cost per year on account of each of these special trains ; and

(ii) the public, State or other utility, if any, of the provision of these special trains ?

THE HONOURABLE MR. A. C. MCWATTERS : (a) Special trains are run for the conveyance of the inward foreign mails :

(1) From Bombay to Howrah every week.

(2) From Bombay to Madras via Arkonam and Arkonam to Negapatam every fortnight when the Europe mails for the Straits Settlements are sent across India.

(b) (i) The cost of running the Bombay-Howrah special is Rs. 1,12,866 per annum.

The cost of the Bombay-Madras and Arkonam-Negapatam specials is Rs. 60,814 and Rs. 26,926 respectively per annum. India, however, receives from the Straits Government in transit fees about three-fourths of the total cost of this service.

(ii) In respect of the Bombay-Howrah special the mails are too heavy to be conveyed by the ordinary mail train which could not take the extra bogies required. If the inward foreign mails between Bombay and Howrah were sent by the ordinary mail train, they would have to be sent in batches which would cause serious delay.

The Bombay-Madras and Arkonam-Negapatam service is required for the Straits mails in consequence of an international obligation for which payment is received. It is also utilised for the inward foreign mails for South India once a fortnight.

#### CONVEYANCE BY SPECIAL TRAINS OF INWARD FOREIGN MAILS.

163. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE : Will the Government be pleased to lay on the table a tabular statement showing how it will affect the revenue on account of postage on foreign letters, etc., if the system of the provision of special trains for inward foreign mails is discontinued ?

THE HONOURABLE MR. A. C. McWATTERS : The revenue on account of the postage on foreign letters, etc., would not be affected if the special trains were discontinued.

#### THE SANTRAGACHHI-VISTUPUR CHORD LINE OF THE BENGAL NAGPUR RAILWAY.

164. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE : (a) Is it a fact that a scheme for the Santragachhi-Vistupur chord line of the Bengal Nagpur Railway was prepared several years ago ?

(b) Will the Government of India in the Railway Department be pleased to inform the Council what steps, if any, have been taken to give effect to the project of the said chord line ?

(c) Is it in the contemplation of the Government to give effect to the scheme, at an early date ?

(d) What is the approximate time within which the said scheme is likely to be taken in hand ?

(e) Is there any prospect of the project being abandoned ? If so, why ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) Yes.

(b) to (e). Government do not contemplate re-investigating the project in the near future ; but they are not prepared to say that it will never be taken up.

#### RESERVATION OF THREE POSTS OF ACCOUNTANT-GENERAL FOR MEMBERS OF THE INDIAN CIVIL SERVICE.

165. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE : (a) Is it a fact that three posts of Accountant-General are reserved for members of the Indian Civil Service ?

(b) If the answer to (a) be in the affirmative, will the Government be pleased to state the reasons for this reservation ?

**THE HONOURABLE MR. A. F. L. BRAYNE :** Originally all appointments of Accountant General were reserved for members of the Indian Civil Service. Now only 3 out of 17 such appointments are held by them. The reservation was made because experience showed that, as in the case of other Departments, such as the Posts and Telegraphs and the Imperial Customs Service, the admixture of a few specially selected members of the Indian Civil Service with their special training and experience added generally to the efficiency of the Department and in this case provided officers trained in finance for higher posts under Government.

**BILLS AFFECTING INDIANS PENDING BEFORE THE SOUTH AFRICAN PARLIAMENT.**

166. **THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY :** Will the Government be pleased to state what Bills affecting Indians are now on the anvil of the South African Legislature and the nature of these Bills ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** So far as the Government of India are aware, there are at present no Bills affecting Asiatics pending before the South African Parliament.

**COMPOSITION OF THE INDIAN DELEGATION TO THE LEAGUE OF NATIONS IN 1926.**

167. **THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY :** Will the Government be pleased to state :

(a) the names of the members of the Government of India delegation to the League of Nations Assembly held in September 1926, and the pay and allowances drawn by them : and

(b) the composition of the Secretariat staff, which accompanied the above delegation, and the pay and allowances drawn by them ?

**THE HONOURABLE MR. S. R. DAS :** A statement showing the composition of the delegation and of the Secretariat staff is laid on the table. The delegates and substitute delegates who held office under the Crown in India received during the period of their deputation on the delegation two-thirds of Indian pay *plus* travelling expenses and subsistence allowances. The delegates and substitute delegates and the members of the Secretariat staff who held appointments in the India Office drew the ordinary pay of those appointments *plus* travelling expenses and subsistence allowances. The delegate and substitute delegate and the members of the Secretariat staff who held no appointment under the Crown received travelling expenses and subsistence allowances only.

*Statement showing the composition of the Indian Delegation to the 7th Assembly of the League of Nations held in September 1926 and the Staff which accompanied the Delegation.*

**DELEGATES.**

Sir William Vincent, K.C.S.I., Member of the Council of India.

His Highness the Maharaja of Kapurthala.

Khan Bahadur Sheikh Abdul Qadir, Bar.-at-Law.



## SUBSTITUTE DELEGATES.

Sir E. Chamier, K.C.I.E., Legal Adviser to the India Office.

Sir C. P. Ramaswami Ayyar, K.C.I.E., Member, Executive Council, Madras.

Sir B. K. Mullick, Kt., Judge, High Court, Patna.

## STAFF.

Mr. W. D. Croft, India Office, Private Secretary to Sir William Vincent.

Sirdar Muhabbat Rai, Private Secretary to His Highness the Maharaja of Kapurthala.

Mr. M. Sleem, Private Secretary to Khan Bahadur Sheikh Abdul Qadir.

Mr. P. J. Patrick, India Office, Secretary to the Delegation.

Mr. R. W. Wright, India Office, Assistant Secretary to the Delegation.

NUMBER OF OFFICIALS OF THE GOVERNMENT OF INDIA AND PROVINCIAL GOVERNMENTS IN RECEIPT OF BOTH PAY AND PENSION.

168. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY : Will the Government be pleased to state :

- (a) what are the rules as regards Government officials being allowed to draw both pay and pension ; and
- (b) how many officials of the Indian Government and Provincial Governments have been allowed to draw both pay and pension and the reasons why they have been granted this privilege ?

THE HONOURABLE MR. A. F. L. BRAYNE : (a) The rules on the subject are contained in Chapter XXI of the Civil Service Regulations, a copy of which is in the Library of the House.

(b) The collection of information required by the Honourable Member will involve considerable time and labour which the Government are not prepared to expend.

ALLEGED MISCONDUCT OF EUROPEANS AT SERAJGUNJ GHAT STATION.

169. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY : Is it a fact that several Europeans broke into the booking and parcel offices at Serajgunj Ghat station on the night of 21st June 1927 and smashed several station lamps and assaulted two of the station staff ?

If so, what steps have the railway authorities taken against these persons ?

THE HONOURABLE SIR GEOFFREY CORBETT : Government have received no report of any such incident. If it occurred, the Agent can be relied upon to take such action as may be required.

LEVY BY THE EASTERN BENGAL RAILWAY OF TOLLS ON BOATS MOORED TO THE RAILWAY GHAT AT NARAINGUNJ.

170. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY : Is it a fact that the Eastern Bengal Railway authorities are levying tolls on boats moored to the railway ghat at Naraingunj ? If so, since when and why ?

THE HONOURABLE SIR GEOFFREY CORBETT : The Agent, Eastern Bengal Railway, reports that he has let a contract for mooring rights on the railway foreshore and canal at Narainganj with permission to levy tolls for one year from the 1st April 1927. The contract was entered into in order to protect railway property from damage and to prevent rights of occupancy.

**PROSECUTION FOR ASSAULTS BY CREWMEN EMPLOYED ON THE EAST INDIAN RAILWAY.**

**171. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY :** Will the Government be pleased to state how many, if any, cases of assault have been brought in the criminal courts against the crewmen employed in the East Indian Railway and with what results ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** I am enquiring and will let the Honourable Member know.

**PROVISION OF APPOINTMENTS FOR THE INDIAN EMPLOYEES OF THE ARMY CANTEN BOARD.**

**172. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY :** (a) Is it a fact that the Army Canteen Board in India which is now under liquidation was an institution started by Government guarantee and controlled by a board of management, including high Government officials, and that a large sum of money was advanced to the Board by the Imperial Bank of India on the security of the Government of India ?

(b) Is it a fact that the employees of the Board joined its service on the understanding that it was a semi-Government institution ?

(c) Is it a fact that the European employees of the Board have in most cases been provided with new jobs in the Indian Army Service Corps and in other Government appointments without having to pass the admission examinations and beyond the limit of their age ?

\* (d) What have the Government so far done to make similar concessions and provisions for the Indian employees of the Board ?

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF :** (a) Yes.

(b) No, Sir.

(c) No. Only 5 out of the 84 Europeans previously employed by the Army Canteen Board have been appointed to the Indian Army Service Corps. There is no examination for entry into the subordinate ranks of the Indian Army Service Corps into which these men were admitted. All five men were ex-soldiers and three of them had held commissioned rank. As far as Government are aware, no European employee of the Army Canteen Board has yet been appointed in any other Government department.

(d) Government have already done, and will continue to do, what they can to help the Indian employees to obtain employment in Government offices, and at least 10 have already secured such employment.

**EMPLOYMENT OF UNPASSED MEN IN THE OFFICE OF THE FINANCIAL ADVISER, MILITARY FINANCE.**

**173. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY :** (a) Is it a fact that candidates for employment in the office of the Financial Adviser, Military Finance, are not exempt from the examination by the Public Service Commission ?

(b) Is it a fact that a number of unpassed men are employed in the Military Finance Department ? If so, why ?

(c) Is it also a fact that some of the unpassed men do not hold any permanent posts in the Military Accounts offices and have been taken in this office without the usual condition of passing the prescribed examination? If so, why and for what period?

(d) Is it a fact that these unpassed men are being given preference over passed and experienced men available from the Public Service Commission?

(e) When do the Government propose to replace the unpassed men by qualified candidates on the waiting list of the Public Service Commission?

THE HONOURABLE MR. A. F. L. BRAYNE: (a) The reply is in the affirmative.

(b) There are two categories of unpassed men employed in the Military Finance Department:

(1) Those who have been recruited from the Military Accounts Department under the special authority given to the Financial Adviser, Military Finance.

(2) Those who have been recruited temporarily with the permission of the Staff Selection Board and the Public Service Commission.

The first class have been taken on account of their technical qualifications; the men in the second class were engaged because no passed men were available at the time and they are being retained to complete a special piece of work on which they are employed.

(c) There is only one such clerk. He was recruited under the authority referred to at (b) (1) above.

(d) The question is not understood. If the Honourable Member means preference in the matter of promotion, the answer is in the negative.

(e) The unpassed men, other than those recruited from the Military Accounts Department, are temporary employees and their services will be dispensed with on the completion of the special work on which they are engaged.

#### RATES PAID TO THE CONTRACTORS BY GOVERNMENT SERVANTS FOR INDIAN CLERKS' CHUMMERIES IN NEW DELHI.

174. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY:

(a) Will the Government be pleased to state the rate per chummary at which the Indian clerks' chummeries at New Delhi were leased to contractors for the year 1926-27?

(b) Is it a fact that rents as high as Rs. 19 per chummary were charged by the contractors from the Government servants, who occupied them during the last winter?

(c) Do Government propose to take steps to prevent profiteering at the cost of Government employees?

(d) Have Government considered letting the chummeries direct to the Government servants concerned?

THE HONOURABLE MR. A. C. MCWATTERS: (a) Rs. 1,400 per block.

(b) Government believed that a rent of Rs. 19 per mensem for each quarter was charged when occupied by two persons.

(c) The lease of some of the blocks to the Imperial Secretariat Association is under consideration.

(d) No.

NOTES PUBLISHED IN THE *Hindustan Times* UNDER THE CAPTION "UNIVERSITY EXAMINATION RULES."

175. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY : Has the attention of the Government been invited to the note under the caption "University Examination Rules" published in the *Hindustan Times* of the 1st July 1927 ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : Yes.

APPOINTMENTS IN THE PROVINCIAL SERVICES OF NEIGHBOURING PROVINCES OF GRADUATES OF THE DELHI UNIVERSITY, ETC.

176. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY : (a) Has the attention of the Government been invited to the note under the heading "Delhi's disabilities", published in the *Hindustan Times* on the 24th August 1927 ?

(b) What steps do the Government propose to take in this respect ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :

(a) Yes.

(b) Information has been called for and a further reply to this part of the question will be given on its receipt.

THIRD CLASS COMPARTMENTS ATTACHED TO THE DOWN PUNJAB CALCUTTA MAIL.

177. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY : Is it a fact that only two third class compartments are attached to the Down Punjab Calcutta Mail and that one of them is reserved for Europeans and Anglo-Indians ? If so, has the attention of the Government been drawn to the great inconvenience caused to Indian third class passengers by being confined to one compartment and to the fact that the other compartment goes almost empty ?

THE HONOURABLE SIR GEOFFREY CORBETT : Two bogie third class carriages are attached to this train between Rawalpindi and Lahore and one bogie third class carriage between Lahore and Saharanpur. Each carriage has two compartments for 40 passengers each and two for 21 passengers each. Of these, one compartment for 21 passengers is reserved for Europeans and Anglo-Indians.

CONSTRUCTION OF TRAM LINES IN NEW DELHI.

178. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY : Have the Government received any proposals for constructing tram lines in New Delhi ?

If so, what steps do the Government propose to take to give effect to such construction ?

THE HONOURABLE MR. A. C. MCWATTERS : (a) No.

(b) Does not arise.

**APPOINTMENT OF MR. F. HARRINGTON AS CURATOR OF THE VICTORIA MEMORIAL IN CALCUTTA.**

**179. THE HONOURABLE MR. KUMAR SANKAR RAY CHOUDHURY :** Will the Government be pleased to state from what date and on what terms and conditions Mr. F. Harrington has been appointed Curator of the Victoria Memorial at Calcutta, and what are the qualifications of Mr. Harrington for holding this appointment and why no Indian has been appointed to that post ?

**THE HONOURABLE MR. H. G HAIG :** Mr Harrington was appointed Art Exper , Victoria Memorial, in 1903. In 1922, on the death of the Curator, the Trustees combined the posts of Art Expert and Curator in the person of Mr. Harrington on a pay of Rs. 500 per mensem together with a monthly house allowance of Rs. 300 in lieu of free quarters previously enjoyed by him. Mr. Harrington's duties comprise general responsibility for, and watching over, the collection, restoration, prevention of deterioration and repair of all exhibits and pictures which require constant expert attention. He also attends to all enquiries from tourists and eminent visitors, is in charge of admission fees and controls the exhibition staff of the institution. Mr. Harrington is a Member of the Royal Society of Arts, has studied picture preservation for 40 years, and has several noteworthy achievements in picture restoration to his credit. His work has received approval from successive Governors and Trustees who have had no reason for making any change during the whole period of his service.

**SEPARATE ARRANGEMENTS FOR VEGETARIANS AND NON-VEGETARIANS IN THE INDIAN REFRESHMENT ROOM AT HOWRAH.**

**180. THE HONOURABLE MR. MAHENDRA PRASAD :** (a) Have Government received complaints that inconvenience is felt at the Indian refreshment room at Howrah railway station for want of separate arrangements for vegetarians and non-vegetarians due to insufficiency of space in the cook room and for want of a separate arrangement for females ?

(b) If the answer to (a) be in the affirmative, will the Government be pleased to state the measures that are being taken to remove these defects ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** (a) Government have received no complaints to this effect.

(b) These are matters which the Agent is competent to deal with. A copy of the Honourable Member's question will be sent to the Agent.

**FLOODS IN ORISSA.**

**181. THE HONOURABLE MR. MAHENDRA PRASAD :** Will the Government be pleased to make a statement regarding the present situation of Orissa, stating the area affected by the flood, loss of human life and cattle, number of houses that have collapsed or have been damaged, amount sanctioned by Government for relief, amount available from public subscriptions for relief, and the measures taken till now to relieve the distress, in detail, as far as possible ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** The Local Government have been asked for full particulars. A statement will be made when they have reported.

**ARRANGEMENTS FOR LIGHTS AND FANS IN SECOND CLASS CARRIAGES IN SOME OF THE TRAINS ON THE BRANCH LINES OF THE EAST INDIAN RAILWAY.**

182. THE HONOURABLE MR. MAHENDRA PRASAD : (a) Have Government received complaints of the inconvenience felt at present by second class passengers for want of good arrangements for lights and fans in some of the trains on the branch lines of East Indian Railway, such as Sone-East Bank to Daltonganj-line ?

(b) Will the Government be pleased to state if they intend providing the trains running on branch lines with up-to-date facilities and conveniences similar to those provided in the trains running on the main line ?

THE HONOURABLE SIR GEOFFREY CORBETT : (a) Government have received no complaints to this effect. About two years ago they gave Government Inspectors definite instructions to report specially on the condition of branch line stock, and the report received for the East Indian Railway for the year ending 31st March 1927 showed that the passenger stock on the principal branches was good and well maintained.

(b) As the instructions mentioned in my reply to the previous part of the question show the subject of branch line stock is receiving careful attention and it is desired by the Government that branch line stock should be brought up to date, the Honourable Member will recognise that this must be a gradual process as funds permit.

**WAITING ROOMS AT STATIONS ON THE BENGAL AND NORTH-WESTERN RAILWAY.**

183. THE HONOURABLE MR MAHENDRA PRASAD : (a) Will the Government be pleased to lay on the table a statement showing the following particulars regarding the Bengal and North-Western Railway :

- (1) total number of railway stations ;
- (2) number of railway stations provided with waiting-rooms both for (a) first and second class passengers, and (b) third class passengers ;
- (3) number of railway stations not provided with waiting-rooms for first and second class passengers ;
- (4) number of railway stations not provided with waiting-rooms for third class passengers ; and
- (5) number of railway stations provided with special waiting-rooms for ladies ?

(b) Will Government be pleased to state the conditions, if any, under which the Bengal and North-Western Railway provides waiting-rooms for (i) 1st and second class passengers, (ii) third class passengers, and (iii) ladies ; and the number of railway stations that fulfil these conditions, but have not yet been provided with the waiting-rooms of the classes concerned ?

THE HONOURABLE SIR GEOFFREY CORBETT : I am obtaining the information for the Honourable Member.

**NUMBER OF INDIANS IN THE INDIAN CIVIL SERVICE, THE INDIAN EDUCATIONAL SERVICE AND THE INDIAN MEDICAL SERVICE, IN BIHAR AND ORISSA.**

184. THE HONOURABLE MR. MAHENDRA PRASAD : Will the Government be pleased to state the number of posts belonging to (i) Indian Civil Service,

(ii) Indian Educational Service, and (iii) Indian Medical Service, in Bihar and Orissa, and the number in each that are intended ultimately to be occupied by Indians and the number actually held at present by Indians with the period in which the remaining posts in each service are likely to be held by Indians ?

THE HONOURABLE MR. H. G. HAIG : A statement containing the information required by the Honourable Member is being placed in the Library.

#### STATE MANAGEMENT OF THE BENGAL AND NORTH WESTERN RAILWAY.

185. THE HONOURABLE MR. MAHENDRA PRASAD : Will the Government be pleased to state when the present term of the lease to the Bengal and North Western Railway is to expire and when the line is to be taken over under the direct control of the State ?

THE HONOURABLE SIR GEOFFREY CORBETT : The principal contract between the Secretary of State and the Bengal and North Western Railway Company was executed on the 12th December 1882 and terminates by efflux of time on the 31st December 1931. The Secretary of State has, however, the right to determine the contract on the 31st December 1932 by giving one year's previous notice of his intention to purchase the Railway. The question whether this right should be exercised has not yet been considered.

#### SUPPLY OF WATER IN RUNNING TRAINS AND AT STATIONS ON THE BENGAL AND NORTH WESTERN RAILWAY.

186. THE HONOURABLE MR. MAHENDRA PRASAD : (a) Have Government received complaints that great inconvenience is felt by the passengers on the Bengal and North Western Railway for want of arrangements for the supply of water in the running trains ?

(b) Are Government aware that there is no adequate arrangement for the supply of water at the stations of the Bengal and North-Western Railway ?

(c) Will the Government be pleased to state what action has been taken or is proposed to be taken in the matter ?

THE HONOURABLE SIR GEOFFREY CORBETT : Government are not aware of the extent, if any, to which there is substance in the complaints contained in the Honourable Member's question. They relate to matters which might well be brought to the Agent's notice by his Local Advisory Committee, but they have drawn his attention to them by sending him a copy of the question and this reply.

#### NON-RECEIPT BY THE POST OFFICE OF MORE THAN 30 MONEY ORDERS A DAY FROM DISTRICT AND LOCAL BOARDS IN BIHAR.

187. THE HONOURABLE MR. MAHENDRA PRASAD : (a) Is it a fact that a Post Office rule in force in certain Districts of Bihar forbids the acceptance of more than 30 money orders per day from any District or Local Board ?

(b) Is it a fact that certain District and Local Boards in those districts have occasion to pay some 2,500 to 3,000 teachers and doctors by money order per month ?

(c) Has the attention of Government been called to the hardship caused to such doctors and teachers by the consequent delay in the receipt of their pay ? What action, if any, do Government propose to take ?

**THE HONOURABLE MR. A. C. McWATTERS:** (a) No. The number of money orders to be accepted from Districts and Local Boards is not restricted to 30 a day in all post offices. It depends on the permanent staff employed in the post office concerned.

(b) The Government have no information.

(c) The question will be examined. The difficulty presumably arises from the reluctance of District and Local Boards to send the money orders to the post office in batches as they are prepared.

### BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

**SECRETARY OF THE COUNCIL:** Sir, in accordance with rule 25 of the Indian Legislative Rules, I lay on the table copies of—

A Bill further to amend the Indian Tariff Act, 1894, in order to protect the manufacture of cotton yarn in British India ;

A Bill further to amend the Indian Tariff Act, 1894 ;

A Bill to amend the law relating to the fostering and development of the bamboo paper industry in British India ; and

A Bill to amend the Indian Securities Act, 1920, for certain purposes, which Bills were passed by the Legislative Assembly at its meetings held on the 8th and 9th September, 1927.

### RESOLUTION *RE* PROHIBITION OF THE DEDICATION OF UNMARRIED MINOR GIRLS TO TEMPLES AS *DEVADASIS*.

**THE HONOURABLE MR. V. RAMADAS PANTULU** (Madras : Non-Muhammadan) : Sir, the Resolution that stands in my name runs as follows :

" This Council recommends to the Governor General in Council to introduce legislation at an early date to prohibit the practice of unmarried minor girls being dedicated to temples as *Devadasis* ".

Sir, I move this Resolution in response to a large volume of public opinion in my constituency. Numerous women associations, including those of *Devadasis* themselves passed resolutions in their institutions, as well as in public conferences, in many parts of my province urging the need for immediate reform in the direction of abolishing the abominable custom of dedicating unmarried girls to temples and thus condemning them to a life of professional prostitution. A member of the *Devadasi* community speaking of the evil at a conference recently held at Anantapur in the Ceded Districts, pathetically said :

" It is obvious that this particular community while rotting under the corroding influence of its poison is vitiating the sources of national regeneration. Professional prostitution is a canker worm in the blossom of national regeneration and many respectable families are ruined by this evil ".

Mr. Thurston in his informing compilation on castes and tribes in Southern India gives a full and accurate account of the institution of *Devadasis*. A



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recent writer has briefly summarized the incidents of the customary dedication of girls to temples thus :

" In Madras Presidency there is an ancient custom of dedicating young girls to the pagodas as *Dasis*, variously called as *Aradhinis*, *Basavis*, *Bhawanis*, *Devadasis*, *Joginis*, *Maralis* or maids and dancing girls, but who, it is notorious, are used for the purpose of prostitution. Both *Dasis* and dancing girls are used, and dedicated to the temple by the performance of certain ceremonies after which they cannot marry but lead the lives of life-long prostitutes. It appears that after dedication the girls pass through a period of a novitiate during which they learn singing and dancing. The dedication is accompanied by the registration of their names as belonging to the pagoda ".

THE HONOURABLE COLONEL [NAWAB SIR UMAR HAYAT KHAN : (Punjab : Nominated Non-Official) : Sir, on a point of order. We, on this side of the House do not understand a word that the Honourable the Mover says. As we have to participate in the debate, would you, Sir, kindly ask the Honourable Member to speak louder so that we can hear him.

THE HONOURABLE THE PRESIDENT : Mr. Ramadas Pantulu.

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir, the order in which the several acts of dedication may be performed would appear to be these :

- (i) application by the minor's guardian for permission to dedicate ;
- (ii) acceptance by the pagoda authorities ;
- (iii) her registration on the pagoda list from which date she commences to draw her emoluments ;
- (iv) tying of *bottu*, a ceremony of [nominal marriage with the idol (called *Basavi*) consigning her to a life-long spinsterhood ;
- (v) dancing at pagoda ceremonials and for courses of prostitution, for which there is no starting point.

There seems to be some local variations in these ceremonies, for instance, the ceremonies of *gajji* and *phalsobhau* are considered to be final acts of dedication in some parts of the Telugu country.

The chief incident of the custom with which we are mainly concerned is the one consigning the girl dedicated to life-long spinsterhood and to a life of promiscuous intercourse. This fact seems to be indisputable. The Madras Census Report of 1911 which was compiled with great care says at page 67 " that the girl may marry an arrow, a dagger or a tree " and proceeds to say " that she may marry an idol which generally implies that she becomes a prostitute ". Judicial pronouncements which are based on legal evidence tendered before Courts to prove the custom confirm these facts. In a case reported in I. L. R. 15 Madras at page 75, that distinguished civilian judge, Justice Parker, whose judgments are noted for their accuracy and learning, came to this conclusion :

" The evidence shows that a girl who is dedicated as a *Basavi* becomes incapable of contracting a marriage which would be recognised as valid by the law and custom of her caste, that she is at liberty and is expected to have promiscuous intercourse with men generally ".

The system of dedication is perpetuated by retired *Devadasis*, who have no children of their own to dedicate, securing new recruits by adoption of girls.

Custom and judicial pronouncements have alike, unfortunately, recognised the validity of such adoptions and clothed them with legal rights. In order to remove any possible misunderstanding, I must mention to the House that this cruel custom is strictly confined to a particular caste which is differently known in different parts of the country and by no means obtain among a large section of Hindus. It is here that Miss Katherine Mayo either makes a mistake or wilfully misrepresents facts. This is the sweeping way in which she describes the custom at page 51 of her Indian edition of "Mother India":

"In some parts of the country, more particularly in the Presidency of Madras and in Orissa, a custom obtains *among the Hindus* whereby the parents, to persuade some favour from the gods, may vow their next born child, if it be a girl to the gods. On a particularly lovely child, for one reason or another held superfluous in her natural surroundings, is presented to the temple. The little creature, accordingly, is delivered to the temple women, her predecessors along the route, for teaching in dancing and singing. Often by the age of five when she is considered most desirable she becomes the priests' own concubine. If she survives to later years she serves as a dancer and singer before the shrine in the daily temple worship; and in the houses around the temple she is held always ready at a price, for the use of men pilgrims during their devotional sojourns in the temple precincts".

\*\*\* Her parents who may be well-to-do persons of *good rank and caste*, have lost no face at all by the manner of their disposal of her. Their proceeding, it is held, was entirely reputable. And she and her like form a sort of caste of their own, are called *Devadasis* or prostitutes of gods and are a recognised essential of temple equipment".

Comment is unnecessary. Any one who knows anything about the institution will find Miss Mayo's to be a perfectly ludicrous account of it besides being grossly defamatory of the Hindu community as a whole.

I shall now proceed to deal with the attempts that were made to eradicate this evil to show that they have only partially succeeded and that there is scope and need for further measures of a more effective character. This agitation can really be traced as far back as the year 1868. But I find evidence that the Government of India have been acting entirely themselves in the question since 1906-07 when they called for reports from the various Local Governments to ascertain the extent and character of the evil, evidently with a view to suppress it as far as possible.

In the year 1912 three members of the old Imperial Legislative Council, Messrs. Maneckji Dadabhoy, Mudholkar and Madge, brought three different Bills with more or less the same aim, namely, to suppress this evil custom. I hope that Sir Maneckji will not disown in 1927 what Mr. Maneckji did in 1912. The Government of India then referred the whole question to Local Governments and, on the receipt of those opinions, brought a Government Bill in September 1913. It was referred to a Select Committee which reported on it in March 1914. The report was however again referred for opinions and the Bill was ultimately dropped. I understand, Sir, that although there was a fair amount of agreement on the main issues, certain disputes and contentions on some subsidiary issue led to the wrecking of that Bill. One of those subsidiary issues seems to relate to the mode of protecting the girls who are rescued from vice. The differences seem to have arisen on the proposal to hand them over to other religionists or to non-Hindu philanthropic institutions.

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Nothing was done however until 1922 when the matter was again brought before the Legislative Assembly in the form of a Resolution by Dr. H. S. Gour. His Resolution which was carried by a large majority ran thus :

" This Assembly recommends to the Governor General in Council to be so pleased as to enact a law prohibiting the wholesale traffic in minor girls for immoral purposes ostensibly intended as *Devadasis* but in reality used for indiscriminate immoral purposes."

There were no doubt one or two champions and admirers of *Devadasis* in the Assembly then like my friend Diwan Bahadur T. Rangachariar, but the general trend of Hindu opinion was entirely in favour of the reform. Even Mr. Rangachariar displayed zeal but not knowledge in his opposition, for he is reported to have stated as follows on that occasion :

" I know that the question does not affect the Telugu Districts—only the Tamil Districts ".

(*Vide* page 2605 of the Assembly Debates, 1922.) I can contradict this with an amount of confidence which he could not command. Dr. Tej Bahadur Sapru, the then Law Member, thought he wanted more time to deal with the matter, made it clear that the attitude of the Government of India was one of a sympathetic character. Eventually a Bill was introduced in 1924 and finally passed, as Act XVIII of 1924, whereby sections 372 and 373 of the Indian Penal Code were further amended to include cases of disposal of girls dedicated to temples within the scope of the Act. That Act came into force on the 1st January, 1925.

My first submission to this House is that that Act is not adequate to meet the situation. The age up to which the disposal of a girl becomes an offence was no doubt raised from 16 to 18 and the slight changes were made by the Act of 1924. But the two outstanding questions still remain unsolved :

- (1) When will the disposal of the girl be complete so as to make the dedication liable under the section of the Indian Penal Code ?
- (2) Was such disposal saved by the sanction of religious usage ?

So far as my province is concerned the general trend of the case-law was that there was a presumption that the dedication was also for purposes of prostitution and so the disposal referred to in section 372A of the Indian Penal Code was deemed to be complete by dedication and trustees of temples and guardians of minor girls used to be punished under the section. But the Act, XVIII of 1924, which was intended to be an improvement on the old law, had a precisely contrary effect on the law in Madras. During the debate on the Bill of 1924, the Home Member explained the scope of the Act thus :

" We have not definitely assumed that employment as *Devadasis* is equivalent to employment for purposes of prostitution, but should such employment actually prove to come within the definition, our Bill will enable it to be dealt with more effectively than hitherto ".

This throws the law as administered in Madras into the melting pot and begs the very question to be answered. Is dedication with its established customary incidents of spinsterhood and prostitution to be *ipso facto* deemed an offence or not ?

My first proposal therefore, "Sir, is that the penal law should be so amended as to definitely assume that employment as *Devadasis* is equivalent to employment for purposes of prostitution throwing the onus of proving the contrary on the minor girl's guardian and on the trustees of the temple who promote the dedication. That is my concrete suggestion.

Then all this reform will not succeed without some subsidiary legislation and executive action. At present many *Devadasi* families are dependent upon the income derived for temple service, *inams* for their livelihood. If they fail to maintain the heritage and perpetuate the succession to *Devadasihood* they lose their *inams*. So they are compelled to maintain the vicious institute by dedicating their children or by adopted children when they have none. So unless these *inams* are enfranchised by the imposition of a reasonable assessment and the lands made over to the families now in possession and enjoyment thereof, transferring the assessment to the temples, progress will be almost impossible. I therefore beg to submit that the measure of reform is an urgent one and request that some statutory rules should be made under the revenue laws by Government.

Then the time has come for the insertion of a provision in the Religious Endowment Acts, disallowing expenditure on the entertainment of nautches and employment of *Devadasis* in the budgets of temple finance and prohibiting such entertainment and employment.

Finally, the question of making some legislative provision for rescue homes and asylums for the girls who are weaned away from a life of vice and degradation should be seriously tackled. It is no use allowing them to continue in the guardianship of their mothers or patrons who lead a life of vice themselves. The English law affords a guidance to us in this matter. The Statutes of 1885 and 1908 serve a very useful purpose in England to control vice, and a Court of Chancery in England would not allow a mother leading an immoral life to be the guardian of the girl. In removing them from the guardianship of their immoral guardians, care should be taken that they should not be made over to non-Hindu homes or institutions for the feelings of the community will be outraged thereby. Hindu asylums should be established having regard to the religious susceptibilities of the community. The local and municipal boards should be made to bear a portion of the cost of their maintenance.

These reforms are now easy of accomplishment because the general Hindu sentiment has come to realise the enormity of the evil custom. Even Pandit Madan Mohan Malaviya, a pillar of Hindu orthodoxy, spoke thus on a measure of reform of this character in the Imperial Legislative Council in 1913 :

"I hope that not a man in the country will be able to put forward one single text which will justify a thing which is so irreligious and sinful as the dedication of minor girls in a position where they must be compelled to lead a life of sin and shame".

"My Lord, I hope that all sound men will be united in the desire to support the Government in any legislation which shall secure that no girl shall be led, induced or compelled to take to a life of shame or placed in a position where she may be helplessly led to adopt it until she has attained to discretion".

[Mr. V. Ramadas Pantulu]

Again, Sir, the *Devadasi* community itself has awakened to its rights to live as respected members of the Hindu community in general and have already begun to marry their girls and settle them honourably in life. So it will be the duty of

12 Noon.

the State and the public in general to encourage those efforts and to make rapid progress in the direction of eradicating this evil. I assure this House finally that the social problem involved in this Resolution is one of great national importance, and I therefore ask for the very serious and sympathetic consideration of this question both by this House and by the Government. With these words I beg to move the Resolution.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I think it is only right that Government should at the very beginning place before the House the position which they take up with reference to this Resolution. To begin with, we welcome the Resolution though, for reasons which I am about to state, we are not in a position to accept it. We welcome it because of the object which underlies it, the suppression of the practice of dedication of minor girls as *Devadasis*, an object with which the Government is in wholehearted sympathy so far as that practice leads to prostitution. It was with this object that in 1924 the Government introduced a Bill which amended sections 372 and 373 of the Indian Penal Code. I propose now to quote a passage from the speech of the then Home Member, Sir Malcolm Hailey, when introducing the Bill—a passage which the Honourable Mover has already quoted. He said :

“We have not definitely assumed that employment as *Devadasis* is equivalent to employment for the purposes of prostitution. But should employment actually prove to come within that definition, our Bill will enable it to be dealt with more effectively than hitherto.”

Now, Sir, that explains even now the position of the Government. The Resolution assumes as the Learned Mover has clearly pointed out, that employment as *Devadasis* is in fact equivalent to employment for the purposes of prostitution. If that is a fact there can be no doubt that the law as amended in 1924 covers such a case, and any dedication of a *Devadasi* would be an offence under sections 372 and 373 as amended :

“Whoever sells, lets to hire or otherwise disposes of any person under the age of eighteen years, with intent that such person shall at any age—”

That is to say, not necessarily at the time of disposal :

“—be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful or immoral purpose.”

And I draw particular attention to the next words :

“Or knowing it to be likely that such person will at any age be so employed ”

commits an offence under this section.

Now, Sir, it is quite clear that if my friend's assumption is correct—that the dedication is equivalent to her employment as a prostitute as a matter of fact—then there is no question that the person who dedicates her must be taken to know that that person is likely to be employed as a prostitute and no further strengthening of the Act is necessary. If, on the other hand, it is not a fact

that the dedication is equivalent to her employment as a prostitute, then some doubt may be raised as to whether it comes within that section or not. There has been a certain amount of conflict of decisions in the Madras High Court as regards this fact, and the position of Government is this : if the Judges of the Madras High Court, who are more familiar with what happens in the Madras Presidency with reference to these *Devadasis* than the Government, are not prepared to hold that dedication is equivalent to the employment of a girl as a prostitute, it is somewhat difficult for the Government to introduce legislation on the assumption that that is a fact. It is for this reason that the Government is not in a position to accept this Resolution which would really amount to their accepting as a fact that the dedication of a minor girl as a *Devadasi* amounts to, or is equivalent to, her employment as a prostitute. But if the Honourable Mover is certain of his facts; if it is a fact that such dedication does amount to employment as a prostitute, what I would suggest to the Honourable mover is that he should move the people of Madras to institute vigilance associations to see that prosecution in every case of dedication is launched against the person who dedicates as well as against the persons who obtain possession of girls, and that sections 372 and 373 are given effect to. The Government are, however, sympathetic towards the suppression of this crime, and I should like to assure the House that the Government feel this evil very seriously and that they would be prepared to assist the House in every way to suppress the evil if, as a matter of fact, the dedication of a girl does amount to her employment as a prostitute. I trust the House will recognise that that is an assumption which the Government as such is not in a position to make, certainly without further inquiries; and I am prepared to say this : that, if the Honourable Mover will introduce a Bill or any other measure by which he can suggest further strengthening of the law on this point, we are perfectly willing to circulate such proposals or measures for opinion and then you can ascertain whether the dedication of a girl does really amount to, or is necessarily followed by, her employment as a prostitute.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-official) : Sir, it is a matter of great satisfaction that my Honourable friend, Mr. Ramadas Pantulu has brought this Resolution before the Council. He has dealt with the subject in a very thorough and satisfactory manner, and it is therefore needless for me to offer any further comments on the subject. I have also heard with interest the learned explanation which was given by our able and distinguished Law Member. There is no doubt that there is a divided opinion so far as the interpretation of these two sections 372 and 373 is concerned. It is said that it is not possible to bring a case within the limits of these sections in the absence of direct proof. The Honourable the Law Member has given a full explanation of the law on the subject and has stated that he would be very willing to further strengthen the provisions if any method can be devised. May I submit for his consideration a simple suggestion ?

There is no doubt that it is a matter of absolute moral certainty that these innocent girls are dedicated to temples with the express object of employing them as prostitutes. There are no two questions about it at all. Could not the Government put a proviso to section 372 or section 373 of the Penal Code or to

[Sir Maneckji Dadabhoy.]

section 114 of the Evidence Act and presume in case of a dedication that it is for the purpose of prostitution and throw the burden on the opposite party for rebutting that presumption in the negative. If this is done, the whole question, in my opinion, will be solved, and a great deal of relief will be given to communities who are now clamouring for it. I think, Sir, there can be no objection to introducing a presumption of this nature into the law, because it must be a natural presumption. No respectable person would dedicate his young girl or his young child to a temple, throw her to the tender mercies of regular prostitutes or put her in such unfavourable and loathsome environments except with the object of seeing her turned out as a prostitute. Therefore, it would be a natural presumption to draw that the people who employ her in the temples accept her with the object of turning her out a prostitute. If, therefore, as I suggest a proviso is introduced, it will solve the difficulty and bring the offenders to justice. I do not think I need say anything more on this subject.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN (North-West Frontier Province: Nominated Non-official): Sir, personally speaking I am absolutely in favour of the Resolution brought forward by my Honourable friend Mr. Ramadas Pantulu regarding the prohibition of the practice of dedicating minor girls to the temples, although I cannot say in what light his own community, i.e., the Hindus, will take this suggestion. To my mind there appears no reason for any opposition of the Hindus to the proposed measure, since it aims at the eradication of a good deal of immorality resulting from this kind of human dedication to the temples. The practice was greatly in vogue in Southern India and Honourable Members might know that it has been done away with in Mysore State by the order of the State Government, because it has been found wanting in the high ideals with which the institution was started. Honourable Members might have had an opportunity to read in the columns of the *Pioneer's* issue of the 7th September 1927, the actual words of the order of the Mysore Government in connection with the abolition of this sort of institution. The order runs as follows:

"The Government now observe that whatever might have been the original object of the institution of the *Devadasis* in temples, the state of immorality in which these temple servants are now found, fully justifies the action taken by them in excluding the *Devadasis* from every kind of service in sacred institutions like temples. Further, the absence of the services of these women in certain important temples in the State has become established for nearly fifteen years past, and the public have been accustomed to the idea of doing without such services. The Government, therefore, see no need to revert to the old order of things as prayed for in the memorials now under disposal. There is, however, no objection whatever to the *Devadasis* coming into temples like all Hindus and offering ordinary worship to the deity like other persons."

It will be seen from the wording of this order, that the practice of dedicating girls to the temples has furnished to the Mysore Government ample proof of a good deal of degradation in it. Now, when a Hindu State like that of Mysore, which is expected to cling to its religious institutions, has considered it wise to effect a reform in this sort of worship, I do not think Hindus would like to offer an opposition to the proposal contained in the Resolution under discussion. I, together with other Muhammadan Members of this Honourable House, would be glad to see the Hindu community begin to see the light in

this direction in accordance with the Islamic Shariat, which absolutely prohibits such practices and institutions.

I, therefore, extend my cordial support to the Resolution brought forward by my friend the Honourable Mr. Ramadas Pantulu, and in doing so I hope that I will be voicing the sentiments of all the Muhammadan Members who can never object to the prohibition of this objectionable practice, provided it is agreed to by the Hindu Members of this House.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: Sir, I entirely agree with all that has just been said by my Honourable friend Major Nawab Mahomed Akbar Khan.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab : Sikh) : Sir, I have heard with regretful surprise the existence of an immoral institution of dedicating young girls to temples in the Madras Presidency, not generally, but in a particular class, and I am strongly inclined to give my warm support to such a Resolution which is intended to bring about a very important reform in human society. Time would have been when the children were considered to be dedicated to deities for the sake of some religious beliefs, but the time has come in the 20th century with all the civilization and education that is rapidly taking place to-day when these practices must be considered as not only immoral but as a great sin to humanity. I have tried to find out from the speech of the Honourable Mover, but have not succeeded in doing so, whether there is a practice of dedicating boys as well to deities. I have tried to find out the reason for dedicating minor girls, and what has struck me is this, that it is human selfishness which prompts parents to dedicate their minor girls to deities. It is perhaps on account of this fact that the girls are considered not only an unhappy addition to the family, but as an item of expenditure to the family, that is of marrying her and taking her responsibility in future. This may be at the bottom of the institution of dedicating girls to deities. Similarly, Sir, there was also a practice in the Punjab among some people of infanticide. Some of them used to kill their girls immediately after their birth, merely to save the expense of marriage and also to avoid the inferior position of marrying the daughter to a man, that is the father of the boy, owed allegiance all his life. The result of this bad practice in the Punjab has been that the female population is very much lower than the male population, and the immoral results of this are also manifest in the illicit connections between man and woman, all due to a reduction in the female population. I think I would not be wrong in saying that at the present day in the criminal courts of the Punjab the majority of the cases relate to abduction of women, and with all respect to the books of law and the Indian Penal Code, to which the Honourable the Law Member has referred, I am in a position, by my personal experience, to say that the existence of sections 497 and 498 of the Indian Penal Code has not in any way diminished the number of abduction cases ; while, on the other hand, out of every hundred cases of adultery and abduction, a very small number is proved in the law courts in the Punjab, and all these cases generally are shattered to pieces. I have no doubt that there is a section in the Indian Penal Code under which action can be taken against the persons if it is found that a girl is dedicated to a temple with the ulterior object of prostitution.

But the question arises whether it would be possible to prove in the law courts to the satisfaction of the prosecution that the girls have been dedicated



[Sardar Shivdev Singh Oberoi.]

for the purpose of prostitution. I think these things are mostly done in such wise and ingenious ways by the mischievous priests who are in charge of such places that it would not be a very easy task to prove the cases in the law courts when those people having been enriched can afford to engage eminent lawyers to defend themselves there. So what has struck me, Sir, is that the Government should not oppose such a measure which is intended to bring forth reform in human society. Time was, Sir, in this country when another similar custom was prevalent, that is of *Sutti*. That is, a widow used to burn herself on the same pyre on which her husband was burnt. Of course, the British Government's name is up to this time regarded with admiration on account of putting a stop to that bad custom in society, although it could have been said at that very time that this is a practice which concerns the society of the Indians themselves and the religious susceptibilities of theirs so it would be for the social societies to bring forward such a social reform. But the Government thought that it is suicidal and it is very sinful that a widow should, on account of devotion to her husband or whatever it may be, also burn herself on the same pyre. So, Sir, I think that this measure which has been brought forward by the Honourable Mr. Ramadas Pantulu is a measure which is to bring forth a reform in human society and to save society from immorality, and not only immorality, but from indulging the courts of the Government in litigation of a fruitless nature. I would support this measure with these few words and request the Law Member with all respect that he should not oppose it but accept it.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): Sir, I think it would be a great pity if Members who do not belong to the Presidency of Madras carry away any wrong impression regarding this subject. I want them clearly to understand that, so far as the Madras Presidency is concerned, the evil to which my Honourable friend Mr. Ramadas Pantulu has referred is confined only to a community which is called *Devadasis*. I hope no one for a moment will take that to be an evil with which respectable members of society or married people have anything to do at all. I am very anxious that there should be no such impression like that. I fear at any rate the speech of my Honourable friend who preceded me has given rise to some confusion. What my Honourable friend Mr. Ramadas is trying to deal with is an evil practice which is confined only to a community which is called *Devadasis*.

I quite agree with the difficulties which have been suggested by the Honourable the Law Member in regard to this measure. If I am not mistaken, when a girl is dedicated to a temple, a medical certificate has to be given that she has come of age. I wonder whether the Honourable the Law Member will find any serious difficulty in insisting that the parent or guardian of the girl who arranges for the dedication is also compelled by some legal enactment to give a declaration amounting more or less to an affidavit which will afterwards be recognised by a court of law—a declaration that the girl in question will not be used for any immoral purpose. If this is done the object of the Mover will be served, and I do hope, having regard to the suggestion made by the Honourable the Law Member that the Honourable Mr. Ramadas Pantulu might bring forward a constructive Bill in this connection—I believe, if I am not mistaken, that the Honourable the Law Member said he would circulate it among the

Local Governments and that some steps would be taken—the matter might be dropped now.

There is again another point on which I should like to lay stress so that there might be no misapprehension. We ought not to forget that public opinion of late has been strongly against the continuance of *Devadasis* and my Honourable friend Mr. Ramadas Pantulu drew the attention of the House to the suggestion that the various religious endowment boards in the provinces may be asked to see, as far as possible, if they could not absolutely do away with it, to see that the emoluments which are attached to this unfortunate institution of *Devadasis* are done away with. If public opinion freely asserts itself and finds that the leaders of our Hindu society are keenly alive to the sense of shame and the demoralisation and degradation which this practice involves, and if those who are connected with the temple management will see that this source of living is no longer available to them—a step which could no doubt be taken by any responsible local Legislature—the Local Governments ought to be quite willing to help in the matter. But I do hope that, having regard to the turn the discussion has taken and the assurance of the Law Member my Honourable friend Mr. Ramadas will consider the suggestion very carefully and withdraw his Resolution.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI : Sir, may I know from the Honourable Member.....

THE HONOURABLE THE PRESIDENT : The Honourable Member is not entitled to speak again.

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir, I must express my gratitude to the Honourable the Law Member and to my colleagues in this House, specially to my Moslem friends, for the very kind response they have given to this Resolution. I am now in a position to console myself with the reflection that both the Government and the non-official Members of this House are at one with me on the necessity for this reform. The Honourable the Law Member's speech is certainly a helpful one. Though the Privy Council has often held that speeches made in the Councils and proceedings in Select Committees and things of that sort ought not to be looked into in interpreting a Statute, it is very often done. (*The Honourable Sir Sankaran Nair* : "At least at home.") The Honourable the Law Member's speech is helpful in that way. He has put the case very clearly and after what he has said no Magistrate ought to have any hesitation in holding that whenever it is proved that the customs of dedication involved spinsterhood and prostitution, persons who are responsible for the dedication will be guilty of an offence under section 372, Indian Penal Code. The Honourable Mr. Das has suggested to me that I might put forward a constructive proposal and that the Government would consider it favourably. I know that it is very difficult for non-officials successfully to get their Bills through all their stages in the Central Legislature, and I therefore venture to make a counter proposal to him that Government itself might consider the addition of a proviso to section 372, Indian Penal Code, on the lines suggested by my Honourable friend Sir Maneckji Dadabhoy. However, as a Swarajist, I ought not to throw away a suggestion made to me to be self-reliant, and therefore I want to take up the suggestion of the Government. With regard to my other suggestions, on reflection, I find that they are all within the competence of the

[Mr. V. Ramadas Pantulu.]

Local Governments and therefore the Local Governments may be asked by the Local Legislative Councils to move in the matter. Having regard to the assurance given by the Law Member and the sympathetic response given by the House as a whole, I am sure I will be able to carry this Resolution, but under the circumstances I do not desire to press it to a division and if you, Sir, and the House will permit me I will withdraw the Resolution on the assurance given to me by the Honourable the Law Member and my Honourable colleagues, of further support.

The Resolution was, by leave of the Council, withdrawn.

## RESOLUTION *RE* ENHANCEMENT OF THE DUTY ON FOREIGN LIQUORS.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU (Madras: Non-Muhammadian): Sir, I beg to move the following Resolution which stand against my name:

"This Council recommends to the Governor General in Council that with a view to promote and ensure moderation in the use of alcoholic liquors and at the same time to give effect to the recommendation of the Taxation Enquiry Committee, the duty on foreign liquors imported into India be enhanced by 50 per cent."

Sir, this Resolution is the direct sequel to the one moved by my Honourable friend Mr. Ramadas Pantulu, and accepted by this House in a modified form in February last, on the subject of prohibition of alcoholic liquors in local Administrations under the direct control of the Government of India. The amended Resolution moved from the official side runs thus:

"This Council recommends to the Governor General in Council that a policy designed to promote and ensure moderation in the use of alcoholic liquors should be adopted in the local Administrations under the direct control of the Government of India."

There is no doubt that this same policy would be pursued by the other Provincial Administrations as well. My Resolution suggests the first step to be adopted in the direction of promoting and ensuring moderation in the use of foreign liquors throughout India. By far, the largest consumers of foreign liquors, apart from the European community are, barring, of course, a few honourable exceptions, the well-to-do and the educated classes among the Indians, who have been wholly or partly westernized. I hope to be pardoned for so saying. I do not mean any offence or insult to the wealthy and educated communities of India and I may at once deny I am the author of this statement. It was Mr. Strathie, I.C.S., who, in his official report on the Excise policy of the Government of Madras, had made that astounding but not altogether unfounded assertion and I simply reiterate it here. In moving this Resolution I do not propose to put a ban on the literates and aristocrats of this country and ask them to totally abstain from enjoying this luxury. The Government of India are opposed to total abstinence and so it would be the height of folly for this class of consumers to go counter to their wishes and disoblige them. There is also the expert medical opinion of Major General T. H. Symons, in their favour, who said during the debate on this subject last time:

"Let me state straightaway that, in moderation—and what I am speaking is in favour of the amendment—that in moderation, alcohol is decidedly a food. When taken in

moderation, 98 per cent. of alcohol is absorbed or taken into the system—whether it be whisky, beer, toddy or arrack—98 per cent. of that is absorbed by oxidization ”.

Now that moderation in drink is the goal of the Government, the question arises as to how best to promote and ensure moderation. The first method is by education and propaganda, and the next by making the cost of liquors prohibitive. It will be something like carrying coals to Newcastle if we begin to educate the educated on the subject of “Moderate drinking”. The next course—and that is the only course available—is to levy a prohibitive tariff on the import of foreign liquors. This would wean, at least the educated classes who are proverbially poor, away from excessive drinking. As for the aristocrats, they will not mind even the prohibitive cost, if they are bent on too much drinking. Time and gradual drain of their wealth must alone bring them to their senses. So let us make an attempt, an earnest attempt at reforming the higher strata of society, by putting a heavy import duty on foreign liquors and making it impossible for the addicts of these drinks to buy them in larger quantities and use them in excess.

The Taxation Enquiry Committee have dealt with the question of increased tariff on foreign liquors rather exhaustively in their Report. They have made out a strong case for the levy of an increased tariff.

Further, the Taxation Enquiry Committee Report says :

“A class of goods upon which a higher duty could apparently safely be imposed consists of wine, beer and spirits ”.

Of course, they make this recommendation on different grounds altogether. There is a supplementary customs duty in the shape of vend fees charges levied in Bombay and Bengal, and the Committee are at a loss to understand why the rest of India should not do so. They consider that if the duty is to be increased at all, it is much better that it should be increased through the tariff than by such indirect and partial means. They add :

“that inasmuch as the root of the difficulty lies in the fact that the duty on the imported article goes to the Government of India and that on the locally-made article to the Provincial Governments, it would be best, in any re-arrangement of the proceeds of taxation that may be made, to arrange that both should be credited to the same head and so to put an end to the unhealthy competition that results from the division ”.

Well, whatever may be their view point, it is pretty clear that an increased tariff rate on foreign liquors and an equally heavy duty on locally-made liquors, will go to restrict their consumption a great deal more than at present, and this will be in consonance with the spirit of the Resolution recently adopted by this House. By so doing we will then bring at least one section of the population of India nearer to the goal of “Moderation ” which the Government of India seem to embrace as their avowed excise policy. With these few words, Sir, commend this Resolution for your kind acceptance.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : (Punjab : Nominated Non-Official) . Sir, no Indian can oppose this Resolution. I support it.

THE HONOURABLE SIR MANECKJI DADABHOY : Question ? It all depends.

THE HONOURABLE MR. A. F. L. BRAYNE (Finance Secretary) : I wish, Sir, I could follow the excellent example of my friend the Honourable Lala Ram Saran Das, who found it possible last week on two consecutive

[Mr. A. F. L. Brayne.]

Resolutions to accept them briefly in principle. The trouble in the case of Dr. Rama Rau is that, however excellent his principle, he wants to go much too fast. He seems to contemplate a sudden increase of 50 per cent. in the import duty on foreign liquors. Now the traditional policy of the Government for some years past has been one of maximum revenue and minimum consumption which being interpreted means that high taxation is used by them as an instrument to discourage the abuse of liquor and also to inculcate habits of temperance. Government have no desire to interfere with the moderate use of alcoholic liquor nor do they desire to drive people, by excessive taxation, to illicit distillation or to the use of more deleterious liquors and drugs. I would ask the House for a minute to bear with me while I indicate briefly what the Government found it possible to do during the last 20 years. In the last 20 years the duty on beer has been raised by 700 per cent., from one anna per gallon to 8 annas per gallon. Import before the War averaged about  $4\frac{1}{2}$  million gallons: in 1925-26 they amounted to  $3\frac{1}{2}$  million gallons, or one million gallons less. The duty on spirits, including whisky, brandy, rum and gin, was in the same period raised from Rs. 6 to Rs. 21-14-0, or by more than 250 per cent. Consumption before the War was  $1\frac{1}{2}$  million gallons and in 1925-26 it was a little under that figure. In the case of wines, the duty on champagne was raised from Rs. 2-8-0 per gallon to Rs. 9, and that on other wines from Re. 1 to Rs. 4-8-0 in the same period. Imports averaged about 340,000 gallons before the War, but now they are only 275,000 gallons. Therefore, the policy of the Government has brought increased revenue and at the same time resulted in decreased consumption, and if it be asked why the reduction has not been greater, I think the reason is to be found in the growth of the population and in the spread of higher standards of comfort throughout India during the last few years.

My Honourable friend wants to raise this duty, which has already been raised by 250 to 700 per cent. by a still further 50 per cent. He has given the reasons which led the Taxation Enquiry Committee to make their recommendations, and I will not repeat those recommendations, but the House will realise from what Dr. Rama Rau quoted that the Taxation Enquiry Committee were not very enthusiastic on the subject.

I do not think that the Taxation Enquiry Committee can ever have contemplated such an increase of duty as 50 per cent. The Honourable Mover in his speech said that his main purpose was to decrease the immoderate use of foreign liquors, but I have yet to hear it said that the classes which mainly use these liquors are given over to intemperance. I think that one of the striking features of modern life has been the tremendous growth of temperance amongst these classes, and I believe His Excellency the Commander-in-Chief will bear me out when I say that intemperance is now practically unknown in the Army. Nor do I think that we could count on much additional revenue from so heavy an increase as 50 per cent. I maintain that the only effect of an excessive duty would be that people who now drink foreign liquor will transfer their allegiance to so-called foreign liquor which is made in the country, and the benefit which my Honourable friend is so anxious to give to our revenues would, I think, be found in the end to accrue to the Provincial Governments. That is happening already, because the consumption of locally manufactured liquor of foreign type has doubled in the last 20

years. Also, if we impose such a high percentage of duty, it might affect the excise policy of Local Governments, and in this connection I may state that it is necessary to preserve a certain amount of equilibrium between the import duty and the local excise duty.

Lastly, there is one little point which cannot be entirely ignored. The great quantity of these imported liquors comes from other foreign countries, and I conceive they might find it difficult to resist counteraction if the Government of India imposed a very high increase in the duty on products imported from those countries.

Thus, to recapitulate, the duties are already very heavy, consumption has fallen to a considerable extent having regard to other factors, and there is no evidence of general intemperance or immoderate use of imported liquor. The Government of India, in adherence to their policy, consider annually at the time of the Budget whether increase in the customs duty is justified by all the circumstances of the case, and I can assure my Honourable friend that they will continue to give full consideration to the question both from motives of encouraging temperance and for revenue reasons, and, further, in connection with the revision of the tariff, to ensure a more equitable distribution of taxation. I am bound to say, however, that it is extremely doubtful whether so heavy an increase as 50 per cent. would be found possible. I trust, therefore, after this statement of the case, and considering the assurance that the question is already engaging the attention of Government and will continue to engage the attention of Government, my Honourable friend will see his way to withdraw his Resolution.

(No Honourable Member rose to speak. A little later the Honourable Dr. U. Rama Rau rose in his place).

THE HONOURABLE THE PRESIDENT: Does the Honourable Member wish to reply? He must look after his own interests.

THE HONOURABLE DR. RAO SAHIB U. RAMA RAU: Sir, the Honourable the Finance Secretary said that my proposal was too much. If it was too much, he might raise the duty by 10 or 15 or 25 per cent. At any rate, he has given me an assurance that the Government will consider the matter when the time comes for the preparation of the Budget. Therefore, I do not wish to press the Resolution.

THE HONOURABLE MR. A. F. L. BRAYNE: I thank the Honourable gentleman, but I hope he will realise that it is impossible to give any particular figure. But I can assure him that the Government will consider the matter when the proper time comes.

THE HONOURABLE THE PRESIDENT: Is it the pleasure of the House that the Honourable Dr. Rama Rau be permitted to withdraw the Resolution?

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: No.

THE HONOURABLE THE PRESIDENT: I presume the Honourable Member from the Punjab understands that his single voice saying: No means that the Resolution cannot be withdrawn.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: I mean it. You may also ask the other Honourable Members.....

THE HONOURABLE THE PRESIDENT : Order, order. The question is :

"That the following Resolution be adopted :

*'This Council recommends to the Governor General in Council that, with a view to promote and ensure moderation in the use of alcoholic liquors, and, at the same time, to give effect to the recommendation of the Taxation Enquiry Committee, the duty on foreign liquors, imported into India, be enhanced by 50 per cent.'*"

The motion was negatived.

## RESOLUTION RE ERADICATION OF THE WATER HYACINTH PEST IN BENGAL.

THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY :  
(East Bengal : Non-Muhammadan) : I beg to move :

"That this Council recommends to the Governor General in Council that 40 per cent. of the revenue realised out of the export duty on jute be utilised for the eradication of the water hyacinth pest in Bengal."

The object of my Resolution is to draw the attention of this House and through it of the Government of India to the awful condition in which a greater part of the province of Bengal is rapidly, though imperceptibly, drifting for the last decade or two. There have been devastating floods in different parts of India and appeals have been made to the Government for help from these quarters. The calamity that has befallen these parts is no doubt sudden and severe, but it is likely to be temporary and its effects will soon pass away, but the calamity that has overtaken Bengal, though not so sudden, is equally, if not more, severe, and is not of a temporary character. It is bound to get beyond all control if it is not seriously tackled immediately.

This weed, water hyacinth, botanically known as *Eichhornia speciosa*, was first introduced in the Botanical Gardens at Calcutta in 1896-98. On account of the bewitching blue flowers the plants were taken in and about Calcutta and soon filled up the tanks and ditches all round. In 1905, Mr. George Morgan took some of them to Naraingunj. In July 1913, practically the whole of Naraingunj, Baider Bazar, Rugganj and Arai-hazar thanas were blocked by them. Manikganj sub-division was affected in 1914, Kishoregunj and Brahmanbaria sub-divisions in 1916. In the rapidity of its growth the plant has now taken possession of almost every tank, ditch and *beel*, and the *haors* of Sylhet and north Mymensingh, the Manda *beels* in Naogaon sub-division, the Chalan *beel*, the Sarail *beels* in Tipperah, the *beels* of Gopalgunj and the *beels* of Gournadi, Uzirpur, and Swarupkathi in Backergunj are the worse sources of infection. It has now almost paralysed the water communications in Eastern Bengal. This is what Mr. Kalipada Maitra, the special officer on Water Hyacinth duty in Bengal, says in his report at page 2 :

"In course of the last 12 months the Barisal mail was on many occasions held up by these weeds near the Kaukhali bend, and in the Nazirpur-Matibhanga channel and missed connection at Khulna. The Chandpur-Raipura passenger steamer was held up for days together last year on the Tippera-Noakhali border. Navigation by boats on smaller rivers and *khals* presents a still greater difficulty. The channels are sometimes so much jammed that it might take even an hour to clear one hundred feet. I have seen many deep channels blocked in such a way that men and animals actually walk over them. The congestion is

ordinarily very acute below the bridges and many iron bridges have given way under the lateral pressure of the weeds holding up strong downward currents, e.g., at Baburhat in Khulna, at Kishoregunj in Mymensingh and at Hili in Bogra. There are very few roads and railway lines in Central and Eastern Bengal. Rivers and *khals* are the vital commercial arteries and trade routes, and blockage of these routes tends to paralyse communications. I have seen for myself how on account of the blockage of *khals* the merchants and shopkeepers cannot freely transport rice and other commodities. The effect is that the prices rise abnormally. I once noticed a difference of Re. 1 per maund of rice in different parts of the same *thana* in the district of Faridpur. I have also seen putrefaction of fishes, fruits and other perishable commodities while held up in transit in certain *khals*. All this might sound like a tale, but the situation can be better felt than described."

Agriculture has also been badly affected in low-lying areas, and this is what the same officer says about it :

"Not only is the navigation obstructed but agriculture in the low lying areas is almost at the mercy of this pest. The broadcast *aman* paddy in the swampy areas counts as the first prey. The late sown jute cannot also escape its doom. According to my estimate a good 15 to 25 per cent. of the winter paddy in the low-lying areas is being damaged year after year since the advent of this infernal plant.

This pest has also taken possession of almost all the sources of water supply. There are very few tanks in Eastern Bengal which have not been polluted by water hyacinth. In Western Bengal the tanks are the plague spots. Even the tanks in Burdwan and Murshidabad districts are badly affected. It is a common complaint that the water hyacinth has affected the fishery kingdom. In many districts income from fishery has dwindled down considerably as the floating water hyacinth has brought about a partial extinction of the fishery particularly in the case of shallow waters. So that if we have to eradicate the pest we have to take into account almost every tank, ditch or *doba* as well as the big *beels* and rivers of Bengal. The task is superhuman and beyond the resources of provincial income.

"For the last twelve years "

I again quote—

"many of the district boards have been spending money over clearance of the worst affected *khals* but they have now grown disgusted and some have discontinued the work as a hopeless task. A channel cleared in the dry season is filled again early in the rains and again when flood water subsides. These boards now feel that unless they can organise simultaneous action all over and unless the border districts join in the campaign nothing can be done."

In order therefore to attain success we must take simultaneous, concerted and continuous action throughout the whole of the affected areas in Eastern and Central Bengal including the Sylhet districts of Assam. The vast and complicated nature of the task involved may best be comprehended by the following statement of the affected area given by Mr. Mitra. This is a statement showing the approximate area of culturable lands, tanks, navigable channels, *khals*, *beels*, etc. In the Pabna District it is culturable lands 276 square miles, tanks, ditches and *dobas* 37 square miles, navigable channels 14 square miles, *khals* which dry up 14 square miles and *beels* 41 square miles, total 382. In the Rajshahi district the total is 382 square miles. In the Faridpur district the total is 462 square miles. In Backergunj 253 square miles, in Dacca 447 square miles, in Mymensingh 1,024 square miles, in Tippera 830 square miles, in Noakhali 22 square miles, in Jessore, 264 square miles, in Khulna 203 square miles, making a total of 4,269 square miles. The solution of the problem how to eradicate the pest has long become very urgent and though the weeds assumed a serious proportion as early as 1914-16 nothing has been done by Government in the



[Mr. Kumar Sankar Ray Chaudhury.]

course of the last ten years. A responsible gentleman like Mr. O'Brien, District Engineer, Backergunj, accuses Government of playing with the problem. But the apathy of the Government of Bengal is perhaps largely due to lack of funds from which that Government has all along been suffering on account of unfair adjustment of the resources of Bengal between the Central and Provincial Governments. The unfavourable position in which Bengal has been placed compared with other provinces may be seen from the following table in which figures for the year 1921-22 are given :

			Realized by taxation.	Taken by Govern- ment of India.	Left to provinces.
			Lakhs.	Lakhs.	Lakhs.
Bengal	..	..	3,416	25,20	8,96
Bombay	..	..	3,777	24,67	13,10
Madras	..	..	21,32	9,57	11,75
United Provinces	..	..	13,81	3,80	10,01
Punjab	..	..	9,75	2,66	7,09
Central Provinces	..	..	5,70	98	4,72
Bihar and Orissa	..	..	4,93	57	4,42
Assam	..	..	2,17	35	1,82

The result has thus been that the Bengal Government has had to impose new taxation simply to carry on the administration without being able to allot any money for the nation-building or nation-conserving subjects. Consequently the Government of Bengal has been repeatedly pressing for the assignment of some more additional sources of revenue to it. Recently the Committee of the Bengal National Chamber of Commerce pressed on the Honourable the Finance Member the desirability of transferring the proceeds of the export duty on jute to Bengal, and this claim has received the support of all public bodies in Bengal. Without going into the merits of this controversy, and conceding for the present that until the revision of the Meston Settlement this question cannot be solved, may I not, in the name of Bengal, appeal to my fellow countrymen from other provinces and to the Government of India to allot to Bengal, at least for 2 or 3 years a certain portion of the income derived from jute for eradicating the water hyacinth pest from Bengal? The cultivation of jute, which is the monopoly of Bengal, and other crops is being seriously hampered by this pest. It is also paralyzing the commercial arteries of Bengal. These are, I submit, matters greatly of Imperial concern and the Imperial Government ought to come out with contributions for solving the problem.

I now come to the cost involved for tackling the situation. According to figures collected by Mr. Maitra, about 981,120 acres have been infested with the pest in Bengal, and the cost estimated by the Irrigation Department for clearing an acre is about Rs. 200. This works up to a figure of about 19 crores. But the Government of Bengal is contemplating to pass laws compelling people to clear the weeds out of tanks and ditches in their private possession. This will no doubt greatly reduce the cost to be incurred by Government, but the real work in the matter of water hyacinth clearance, as observed by Mr. Maitra, 'lies not in tanks and ditches of private individuals but in *khals* and *beels*' and the cost therefore of eradicating the pest will fall more heavily on the shoul-

ders of the Government than those of private individuals. Government no doubt will try to impose this burden on the shoulders of the people themselves by imposing fresh taxation, but this is sure to meet with strenuous opposition from the people, especially when they will also be saddled with the cost of clearing the weeds from tanks and ditches in their own possession.

The burden of the export duty on jute also falls mostly on the poor jute cultivators, as is obvious from the fact that

1 P.M. during the war boom, although the rich purchasers of jute, such as the jute mill-owners reaped huge profits, the price of jute continued as low as about Rs. 3 to Rs. 4 per maund. Moreover, as I have already submitted, export duty on jute and the maintenance of the commercial waterways of Bengal being an Imperial concern, it is not just and proper that the cost of eradicating the pest should be saddled on the shoulders of the people of the province. Taking the cost to be incurred by Government at about 10 crores and spreading it over 5 years, as proposed by Mr. Maitra, Government have to pay at least 2 crores each year towards the solution of this task. The Government of India are realising about 3 crores of rupees each year from the export duty on jute, and I therefore appeal to them to contribute 40 per cent. of this duty towards the eradication of the water hyacinth pest from Bengal which, if not done now, is sure to choke the fair province of Bengal with its livid blue flowers. The period for which it is to be paid I leave purposely open to be decided upon between the Government of India and the Bengal Government, because the time required for eradicating the pest would largely depend upon the method adopted, and the Local Government is alone best fitted to select the method. With these few words, I commend my Resolution for the acceptance of this House.

THE HONOURABLE MR. J. A. L. SWAN (Bengal: Nominated Official): Sir, I feel that as an official serving in Bengal I owe it to the Honourable Mover to explain why I am unable to support his Resolution. In the first place, Sir, his request for a dole for two or three years is much too modest. The Honourable Mover has referred to the financial situation created in Bengal by the Meston Settlement. I should like to supplement what he has said by quoting, with your permission, Sir, two sentences in which the Honourable Sir Malcolm Hailey, at that time the Finance Member of the Government of India, summed up the situation when in September 1922 he moved a Resolution in another place recommending the remission of the Bengal Provincial Contribution of 63 lakhs. Sir Malcolm said:

"We have examined the case both narrowly and critically, and it appears certain that with every economy Bengal must have a deficit of not less than Rs. 120 lakhs even if we make no allowance for any extra expenditure on improvements in Transferred Subjects such as are desired by Ministers. . . . Bengal would have that deficit even if it provided only the bare minimum expenditure required to carry on the ordinary administration of the province."

(At this stage the Honourable the President vacated the Chair, which was taken by the Honourable Sir John Bell, one of the Panel of Chairmen.)

That remission, Sir, was sanctioned and it afforded some relief. But it was very far from setting right the injustice which had been done to Bengal. That injustice, Sir, will not be set right by a dole or a series of doles. It can only be remedied by a revision of the Settlement, and for that the Government

[Mr. J. A. L. Swan.]

of Bengal have never ceased to press. They would prefer that necessary adjustment should be made by means of the income-tax ; but if that cannot be arranged, I understand that they would gladly accept adjustment by transfer of a part, at any rate, of the export duty on jute. My second objection to the Resolution is that it proposes a reversion to the system of ear-marking which prevailed in pre-reform days. That system, Sir, if not unconstitutional, seems to me at least to be entirely contrary to the spirit of the reforms. Any additional revenue which may be assigned to Bengal should be at the absolute disposal of the Government of Bengal and of the Bengal Legislative Council. Finally, Sir, the Resolution is premature. The Honourable Mover has not overdrawn the picture which he has given us of the disastrous effects of the water hyacinth in Bengal. The problem affecting as it does the food supply, the public health and the communications of the province is a grave one and it is receiving the earnest consideration of the Government. I understand that legislation is being prepared, but there are many difficult questions to be settled, such, for instance, as the allocation of responsibility for clearing up the plant between the Government, the local authorities and private individuals. So far, no estimate of the cost has been prepared. The figures which the Honourable Mover has quoted are merely a rough and ready calculation which certainly cannot be accepted without further and very careful examination. Until, therefore, the cost is estimated, I think it would be entirely contrary to all principles of finance to vote a grant for the work. On these grounds, Sir, I regret that I am unable to support the Resolution. But I hope that shortly the Government of India will be able to take up the wider question of revising the Settlement and allotting to Bengal a revenue commensurate with her needs and with her just claims.

THE HONOURABLE MR. A. F. L. BRAYNE (Finance Secretary) : Sir, I fear that I have never made the acquaintance of the two species of the flora of Bengal now under consideration. There is something attractive in a proposal which would have the effect that one aquatic plant which has brought so much wealth and prosperity to certain areas of Bengal should be called upon to supply funds for the eradication of the extension and growing ravages of another such plant ; but I fear, there are many objections in the way of an available and domestic arrangement of that sort. The Government of India are fully sensible of the gravity of that problem and have the fullest sympathy with the Local Government, but they cannot agree in their difficulty to a solution of the problem on the lines proposed in this Resolution. I think it has been suggested that as the export duty on jute to the extent of nearly four crores is collected almost entirely in Bengal, it is only right and just that a share of that duty should accrue to Bengal as a means of relief to the province in her financial difficulties. I maintain that this is not a real argument. Jute is a definite monopoly and it has been held by all economists that when an export duty is imposed on an article for which no effective substitute can be found, that duty is inevitably imposed upon and paid by the foreign consumer. Therefore, it appears to me that on these grounds Bengal can have no claim to a share in the duty. When in 1923, the precarious nature of the finances of Bengal was under consideration, the Government of India very carefully considered whether they could not give Bengal a share of the export

duty on jute ; but they felt that it would be a dangerous precedent to allow a province a share of revenue collected in that province, and as an alternative they agreed to the remission of the provincial contribution to the extent of 63 lakhs. I mention this matter because this remission was really an alternative to a share of the export duty.

The main difficulty is a constitutional one and, of course, there is also a financial difficulty in the way of the present proposal. The first difficulty is that under the present constitution this subject of waterways in Bengal is a provincial subject for the management of which the province is solely responsible. It is therefore absolutely impossible for the Government of India to give any contribution from central revenues for the purpose stated. Then, of course, comes the financial reason. I think every one will admit that there have been various mistakes in the Meston Settlement. It does not work as well as it might do, but the Government of India, I think, have not been tardy to recognise their responsibilities. They have set themselves to get rid of the provincial contributions as quickly as possible. This year they have remitted them entirely, though part of the remission remains temporary. Now, it is to be hoped that this remission will become permanent, and supposing there were two crores available next year for the permanent remission of the contribution, and supposing this Resolution were accepted, the result would be that  $1\frac{1}{2}$  crores or thereabouts would go to Bengal and that these  $1\frac{1}{2}$  crores would have in reality to be paid by the United Provinces, by Bombay, by the Punjab and by Madras. I do not think my Honourable friends from those provinces are likely to be so full of loving-kindness as to agree to such an arrangement. Then, of course, if Bengal got a share of this duty, naturally this would drive other provinces to make similar claims. Bombay would probably, in due course, demand that a duty be imposed on the ship loads of cotton that are exported from that port in order that she might have some relief from her troublesome development liabilities. Burma would undoubtedly claim a share of export duty on rice.

Lastly, I think I may inform the House that Government have under consideration certain proposals for a modification of the Meston Settlement. It was discussed at the last conference of financial representatives. The dominant idea is that the Governments concerned should get a larger share in the growing income-tax revenues of the province. Of course, as the House is aware, Devolution Rule 15 has been a failure in that respect, and Bombay and Bengal have got little or nothing out of it. But under the proposal contemplated it is hoped that they will get some relief from their difficulties in this way. Obviously I cannot say anything more at this stage. The Provincial Governments are being addressed very shortly on the matter, and I cannot say how much Bengal might get out of this arrangement, but I would ask the Honourable Member to wait and see whether a solution cannot be found in that way rather than to press a Resolution asking for relief in a form which the Government could not possibly accept.

**THE HONOURABLE RAI BAHADUR NALINI NATH SETT** (West Bengal : Non-Muhammadan): Sir, I support this Resolution. It is well known that jute is produced only in Bengal and that a very large amount of customs duty is realized by the Central Government from the exportation of jute.

[Mr. Nalini Nath Sett.]

No part of this customs duty goes to the Provincial Government. One of the causes why Bengal is so unhealthy is the cultivation of jute. After the jute crop is cut the stems have got to be steeped in water for a few days in order to enable the fibre being extracted from the stems. This is done by keeping the sticks under water in the ponds, *beels* and waterways, with the result that the water in these ponds, *beels* and waterways gets contaminated and stinky and becomes unfit for use, even by the cattle and when there is a scarcity of good water various diseases break out. This is the result of the production of jute. Equitably, therefore, the Provincial Government should have a permanent share in the profits arising from the production of jute. My friend the Mover's demand is therefore very reasonable. He only asks for a certain period a portion of the income from jute. The question of eradication of the water Hyacinth has assumed such a formidable proportion in Bengal that it is not possible for the Provincial Government to cope with the evil with the very limited resources at its disposal.

As has been pointed out in the report of the special officer on water Hyacinth it is not possible for people to conceive of the misery which has been brought on Eastern and a part of Central and Northern Bengal by this pest. It is not possible for people while travelling in railway trains to believe that these apparently innocent flowery plants which look so nice can choke up the navigable channels in Eastern districts rendering navigation almost, and in many cases totally, impossible. This pest has now invaded Western Bengal, such as Burdwan and other districts and most of the tanks and waterways in Western Bengal have been polluted. The water of these tanks has got to be used for drinking and other domestic purposes as there is no water from any other sources available in most places, and the result is that various sorts of preventible diseases break out in epidemic form.

It has been reported by the special officer that this pest can be eradicated if a sufficient sum of money is available. As I have said before, the Bengal Government can hardly be expected to spend the large sum of money necessary for the purpose. As a result of the Meston award Bengal has been starved since the Reforms. It has with the greatest difficulty and owing to the remission of the Contribution to the Central Government been able to continue its routine administration with the limited resources at its command. It is therefore incumbent on the Central Government to come to the help of Bengal in these special circumstances. I would therefore appeal to the House to carry this Resolution and save the people of Bengal from diseases and untimely death.

THE HONOURABLE THE CHAIRMAN: (SIR JOHN BELL): The question is :—

“ That the following Resolution be adopted :

‘ This Council recommends to the Governor General in Council that 40 per cent. of the revenues realised out of the export duty on jute be utilised for the eradication of the water hyacinth pest.’ ”

The motion was negatived.

## RESOLUTION *RE* LEVY OF AN EXPORT DUTY ON OIL-SEEDS, BONES AND OTHER FORMS OF MANURE.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU (Madras : Non-Muhammadan): I beg to move :

“ That this Council recommends to the Governor-General in Council to give immediate effect to the recommendation of the majority of the Taxation Enquiry Committee contained in paragraph 162 of their Report, regarding the levy of an export duty on oil-seeds, bones, and other forms of manure, with a view to promote the interests of the agriculturists in India.”

Sir, this Resolution hardly needs any lengthy comment. Since the publication of the Taxation Enquiry Committee's Report, the Government have adopted some of their recommendations *in toto* and have begun to revise the tariff rate in accordance with those recommendations. In some cases, they have disregarded the Committee's recommendations and have acted *contra* to their wishes. One instance of the latter will be found in the lowering of the import duty on motor-cars from 30 to 20 per cent. In regard to this the Committee distinctly held that :

“ the much criticized 30 per cent. duty on motor-cars has justified itself as a producer of revenue. After a severe slump, which was partly due to special causes, imports have nearly recovered to the level they attained in 1919-20.”

But still, the Government thought fit to reduce the rate in the interest of the western trader and western manufacturer. The readiness and alacrity with which the Government of India sought to reduce this duty and thereby help the foreign producers to dump the excess output of motor cars on the Indian market is a striking contrast to the slow, halting and indifferent attitude they have adopted in giving effect to the majority of the Taxation Enquiry Committee in regard to the levy of an export duty on oil-seeds, bones and other forms of manure, calculated to further the interests of the Indian agriculturists. Thus, it is evident that there is no definite policy underlying the revision of tariff rates, that the Government are in no way guided by the recommendations of the Taxation Enquiry Committee, nor are they prepared to consult the Legislatures before any tariff reform is contemplated. In this particular instance, there is every possibility of the Government brushing aside the majority recommendation and upholding the minority view. A clear and clever inkling on this point is already given in the last line of paragraph 162 of the Taxation Enquiry Committee's Report which says :

“ The President and Sir Percy Thompson are opposed to this recommendation, on which the Maharajadhiraja Bahadur of Burdwan expresses no opinion.”

and the Government are not slow to understand it. Read between the lines, it means that the European opinion is dead against this recommendation and the landed aristocracy of India, represented by the Maharajadhiraja of Burdwan, is indifferent to it and so no heed should be paid to majority recommendation. It is therefore incumbent on this Council to press the popular view and bring home to the Government of India the urgency and importance of the proposal which aims ultimately at the building up of a big oil industry in India besides bringing plenty and prosperity to the teeming poverty-stricken millions of agriculturists in this country. Hence this Resolution.

[Rao Sahib Dr. U. Rama Rau.]

A word about the productivity of oil-seeds and the possibility of an oil industry in India will not be out of place here. India is the principal source of supply of oil-seeds in the world. It produces the following seeds: Copra, mahwa, cotton seeds, rape, mustard, sesame, castor, linseed, poppy, ground-nuts, tea seeds, tobacco seeds, sunflower, etc., besides some mineral fats and oils. These oil-seeds are grown on an average over an area of 40,000,000 acres. No other country in the world produces such a great variety of oil-seeds in commercial quantities as India does. The total value of oil-seeds produced is about 50 million sterling and the total value of India's exports of oil-seeds, oils and oil-cakes amounts to 18 million sterling annually. Great Britain and Germany are the two principal European countries engaging on an extensive scale in the oil and allied industries. Oils and fats are consumed both for edible and technical purposes. Oil-cakes constitute the very valuable bye-products of the oil industry. These cakes are abundantly used as cattle fodder and fertilisers the world over. With the introduction of modern scientific methods and implements in Indian agriculture the demand for fertilisers is bound to increase in the near future. This will create an additional demand for oil-cakes and thus will serve to give a good impetus to the growth of the oil industry in India. Roughly speaking, about 25 per cent. of the oil-seeds produced in India are exported. The rest of the seeds remains in the country and is oftentimes consumed most uneconomically. Oil presses are still in use in large numbers in the country for the recovery of oils from their seeds. This method of recovery of oils is very primitive and wasteful, for, from 10 to 30 per cent. of the actual oil contents of the seeds remain in the cakes and they are entirely lost, as they serve no purpose in the cattle food or manure but rather do harm to both. This is a great national loss.

Mr. R. D. Anstead, C.I.E., the Director of Agriculture, Madras, writing in the *Planter's Chronicle*, gives some idea of the loss sustained by agriculturists in this country by export of manures. He says that in 1926, India exported 45,706 tons of bones, 1,07,142 tons of ground-nut cake and 44,46,600 tons of ground-nuts." During the same period, Madras alone exported 7,895 tons of bones, 3,23,120 cwts. of ground-nut cake, 3,55,293 cwts. of gingely cake, 20,653 cwts. of castor cake, 84,13,199 cwts. of groundnut seeds, 5,64,404 cwts. of castor seeds and 13,995 cwts. of bones. No wonder that the people of India are such miserable specimens of humanity, for they are denied cheap nourishing fatty foods, the cattle are merely limbs and bones, for they are deprived of much useful fodder for their consumption, and the soil is deteriorated and exhausted, for want of good fertilisers and manure.

The time has arrived that this huge exploitation should stop. A double wrong, a double injury has been done to India by this exploitation. It successfully prevents her from building up a large and profitable oil industry in this land and thus finding means of employment for the millions of unemployed roaming about from one end of the country to the other with bowls in hand begging for alms. It prevents also the improvement of the agricultural condition of India, which is fast decaying. It is true that the Government of India under Lord Irwin are trying their level best to improve the lot of the poor agriculturists and the Agricultural Commission that is now sitting is expected

to shower unlimited boons and untold blessings on their heads. But these Commissions are no good, these boons will be of no avail, if the root cause of the evil is not removed. The Indian agriculturist wants *money and manure*—money to buy his cattle, seeds and implements, and to free him from the clutches of money-lenders. He wants manure—cheap manure to fertilize his land and make it doubly and trebly productive. The forest policy of the Government has bereft him even of the shrubs and leaves which he once used as manure. The oil-cake, which he will have to depend upon, goes to foreign lands and is costly and prohibitive. His money problem can be solved by the wide establishment of Land Mortgage Banks, a proposal which this Council recently approved by passing a Resolution to that effect and the manure problem only by raising a high protective tariff wall against the export of oil seeds, bones and other forms of manure. The majority of the Taxation Enquiry Committee held that it is important in the interests of the Indian agriculture to encourage the use of fertilisers, and to increase the supply of a valuable nourishing food for cattle whose condition is generally regarded as deteriorating. They think that the most suitable method of doing so is to impose an export duty which would have the effect of encouraging the crushing of oil-seeds in India and of cheapening the cost of oil-cake and other forms of manure to the Indian cultivator. They also recommend that a part of the proceeds of this export duty should be applied towards educating the cultivators to make an increased use of these artificial manures and thus increase the productivity of the soil. No saner counsel could have been tendered by the Committee and the Government of India, if they are really sincere in their intentions and sympathetic towards the agriculturists, must seriously consider this recommendation and impose a heavy export duty on oil-seeds, bones and other forms of manure, which would form the basis of agricultural advancement in this country. I now commend this resolution for your kind acceptance.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muham-madan) : Sir, my only excuse for detaining the House at this somewhat late hour is to point out that we in Madras have a very unique co-operative product called the bone-meal which co-operative effort wants protection. The officers of the Agricultural Department of the Madras Government have urged upon the Local Government the imperative necessity of protecting the agricultural industry of the Presidency by controlling the exports of some of the indigenous manures. Many raiyats in the Madras Presidency, I know, are very anxious to use the artificial manures because they fully appreciate their nutritive value, but their prohibitive cost practically makes it impossible for them to use these manures. Therefore, the Madras agricultural officers have urged upon the Government some method of controlling the export and artificially keeping down the prices. The great difficulty now found is that the large exports to Japan, Java and Ceylon and to other places leave very little manure for use in the country. No doubt, a small portion of it is used here, but only in the case of very costly crops like sugar-cane. The answer which was given to the advocates of this protection is that the Fiscal Commission has reported that the reduction of prices will lead to diminution in production, and therefore the Government advanced the economic theory that the export duty should not be levied in order to reduce the prices of the manures, lest the producer might be hit. But I may be allowed to point out to this House, Sir, that the theory of the



[Mr. V. Ramadas Pantulu.]

Fiscal Commission has been tested and found to be fallacious, with reference to these three forms of manures, bone-meal, oil-seeds and fish manures. Everybody knows that bone is a by-product and the theory of the Commission does not apply to such by-products. Because the quantity of bone available will depend on animals killed for food or which die of starvation or pestilence and so forth and not on the price of bone-meal. With regard to one other manure—fish manure—fishermen will carry on their trade and are not likely to be less employed because the value of fish manure will fall by the export duty. With regard to oil-seeds, the production is largely regulated by the agriculturist on the system of rotation of crops rather than by the value of the oil cakes. Therefore, I think the Fiscal Commission's economic theory is utterly fallacious with reference to these manures. Therefore, Sir, I am heartily in sympathy with this Resolution and press for a stern manural policy which will help the agriculturists and prevent the deterioration of the soil which is proceeding apace by the illegitimate export of available manures. For these reasons I support the Resolution.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : (Education, Health and Lands Member) : Sir, I wish, if I may, to congratulate the Honourable Doctor who adorns the medical profession in my part of India, for the keen interest that he has exhibited on behalf of the agriculturists. He will, however, pardon me if I say that both his diagnosis and treatment in this case are not as accurate as they are reputed to be in the case of human ailments. The question that he has raised is indeed not so simple as he imagines nor is its solution so easy as he suggests. Furthermore, I press one objection at this stage, namely, that the discussion of this question must be regarded as premature. I take it that the Honourable Member who has moved this Resolution is familiar with the past history of this case and I think it is only due to the House that I should, even at the risk of tiring their patience at this inconvenient hour, try and give them a brief resume of the past history of the question raised. In the year 1922, Mr. K. Reddy, of the same province to which my Honourable friend belongs, moved a Resolution in the Legislative Assembly to the following effect :

“That this Assembly recommends to the Governor General in Council that (a) the export of all kinds of manures from India be prohibited as soon as possible, and (b) that a duty of 10 per cent. *ad valorem* be levied on all kinds of oil-seeds exported from India.”

The Government spokesman who was in charge of that Resolution in the other place after enumerating the difficulties which the acceptance of this Resolution would involve, undertook on behalf of the Government to refer it for the consideration and report of the Board of Agriculture and further promised to refer it for consideration by the Fiscal Commission which was at that time functioning. The Board of Agriculture considered this Resolution very carefully and passed the following Resolution and communicated it to the Government of India :

“Without expressing an opinion on the portion of the Committee's Report dealing with phosphatic manures the Board is of opinion that on the evidence before it, it is doubtful whether the method of prohibition or restriction of export of bones, fish manure and other phosphatic manures would achieve the end desired ; but it is nevertheless of opinion that the retention of its manural resources, especially of phosphate, is of vital importance to the future of the country and that it is essential that a constructive policy should be framed

which would lead to this end, and it therefore requests the Government of India to appoint a small Committee of about five members to consider the question from this point of view and suggest a constructive policy which will lead to the results desired."

Action on this Resolution was postponed pending the receipt of the recommendations of the Fiscal Commission to whom also this specific question had been referred, and my Honourable friend Mr. Ramadas Pantulu has already referred to the fact that the Fiscal Commission reported against any such action. Their language in that connection is significant.

"Many witnesses have advocated the imposition of a protective export duty on oil-seeds. The argument is that a very large quantity of Indian oil-seeds is exported, and that by imposing an export duty the crushing of the oil-seeds would be carried out in India with economic advantage to the country. This proposal like all other proposals for protective export duties is inconsistent with our general principles. In the case of oil-seeds we consider that such a duty would be particularly disadvantageous to the country. Certain oil-seeds are grown very largely for the export trade. The Indian demand for the oil and the cake would be quite insufficient to absorb the whole product, if all Indian oil-seeds were crushed in the country. At the same time there are considerable difficulties in exporting the oil; and it is unlikely that any appreciable export trade in oil could be built up. The main result therefore of imposing a protective export duty on oil seeds would be that the producer would be sacrificed to an unsound economic theory, and that the production of a valuable crop would be discouraged."

In the next paragraph they refer to the use of manures not likely to be promoted by export duties. The Government of India were, therefore, in possession of two recommendations, one from the Board of Agriculture, which, while condemning an export duty, was nevertheless of opinion that it was worthy of being pursued and examined by a small Committee, and on the other, there was the distinct and unequivocal recommendation of the Fiscal Commission...

THE HONOURABLE SIR MANECKJI DADABHOY: Unanimous decision.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH: Unanimous, and from a body consisting of Indians—that the export duty must be condemned for the reasons that they had advanced.

THE HONOURABLE MR. V. RAMADAS PANTULU: May I know, Sir, if the Government of India still support that exploded economic theory?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH: I will deal with my attitude about it. Faced therefore with this contradictory recommendation, the only alternative which the Government of India thought it expedient to adopt was to accept the recommendation of the Board of Agriculture and consider the desirability of installing a small Committee for the purpose of investigating the question as regards the conservation of the manurial resources of the country. This matter was seriously pursued and a proposal to that effect was laid before the Standing Advisory Committee attached to the Department of Education, Health and Lands. Along with this proposal Government had also laid before that Committee a few other proposals, all of which were intended to develop agriculture generally in India. The Committee, while arranging their programme of work, gave this particular item the last place on the priority list. It was impossible to ask the Finance Department to provide money for all the items of work included in that programme, including even the one which,

[Sir Muhammad Habibullah.]

according to the judgment of the Committee, was given the last place. Therefore, we were abiding time for the purpose of bringing into existence the proposed Committee, which for the sake of convenience had been officially designated as the Manures Committee. In the meantime, the last but not the least important incident in this long chain of events occurred—I refer to the Royal Commission on Agriculture which was appointed last year. While, therefore, this Commission has been charged with the specific duty of making recommendations pertaining to every item of agricultural development in this country, and while we expect to receive from that body some valuable recommendations regarding the conservation of the manurial wealth of India, we could take no further action on the Report of the Taxation Enquiry Committee. When the recommendations of the Royal Commission are received, and it is hoped that they will be received in the near future, I can assure the Honourable Member who has moved this Resolution that this matter will receive our most earnest and serious consideration.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: I thank the Honourable Member for his assurance. In the circumstances I do not wish to press the Resolution.

The Resolution was, by leave of the Council, withdrawn.

THE HONOURABLE THE CHAIRMAN (SIR JOHN BELL): I shall now ask the Leader of the House to make a statement with regard to future business.

#### STATEMENT OF BUSINESS.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House): Sir, we shall have no business to place before the Council to-morrow. Wednesday, as Honourable Members are aware, is a non-official day. On Thursday, we shall proceed with the four Bills which have been laid on the table to-day, namely, the three Tariff Bills and the Indian Securities Bill, and motions will be made for the introduction, consideration and passing of the Aden Civil and Criminal Justice (High Court Jurisdiction Amendment) Bill, copies of which will be made available to Honourable Members this evening. Thereafter official Resolutions will be moved by myself and the Honourable Mr. Haig dealing respectively with certain Geneva Conventions and Recommendations, and with the encouragement of Empire cinema films.

The Council then adjourned till Eleven of the Clock on Wednesday, the 14th September, 1927.

## COUNCIL OF STATE.

*Wednesday, 14th September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### QUESTION AND ANSWER.

NUMBER OF MUSLIM INCOME-TAX PAYERS IN THE BOMBAY PRESIDENCY PAYING INCOME-TAX ON AN INCOME OF RS. 30,000 OR OVER.

188. THE HONOURABLE SIR EBRAHIM JAFFER: Will Government be pleased to state the number of Muslim income-tax payers, who paid income-tax on an income of Rs. 30 000 or over, during the years 1924-25 and 1925-26, in the Bombay Presidency proper?

THE HONOURABLE MR. A. F. L. BRAYNE: The information asked for is not readily available and could not be collected without an expenditure of time and trouble which Government are not prepared to undertake as they are not satisfied of the necessity for the information.

### RESOLUTION *RE* SLAUGHTER OF MILCH COWS, BUFFALOES, ETC.

THE HONOURABLE SETH GOVIND DAS (Central Provinces : General): Sir, I beg to move the Resolution which stands in my name and which reads thus:

"This Council recommends to the Governor General in Council to take immediate steps to prevent the slaughter of milch cows, buffaloes and draught animals used for agricultural purposes up to ten years of age."

In connection with this Resolution, Sir, I want to make it quite clear at the very outset that I am not moving this Resolution on religious or humanitarian grounds. I am moving it purely on economic grounds. That is the reason, Sir, why my Resolution asks for the stoppage of slaughter of animals up to 10 years of age only and not for total prohibition. My Honourable friend Lala Sukhbir Sinha moved two Resolutions on the subject in 1921 and 1922. His first Resolution wanted the prohibition of the slaughter of all cows for food purposes, while my Resolution wants merely a partial prohibition. In the same years two deputations waited on their Excellencies, Lords Chelmsford and Reading, the first on the 25th February, 1921, and the other on the 27th March, 1922. These deputations contained representatives of all the communities of this country, Hindus, Muhammadans, Sikhs and Parsis, but nothing has been hitherto done in this respect. Therefore, Sir, I was compelled to reopen the question.

It is needless to say that the cattle problem in this country is becoming more and more serious every day as the slaughter of animals is not decreasing. In the memorial which was presented to His Excellency Lord Chelmsford it

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was proved that within these 50 or 60 years the slaughter has immensely increased, and as a result of the slaughter, the total number of cattle left in the country is totally inadequate for the population if compared with other countries. In proving the increase of slaughter, it was stated in the memorial that—

“Cattle are killed mainly for the following purposes, viz., (a) for food, (b) for the export of the dried meat, and (c) for trade in hides. The figures that are available go to show that the number under all the three heads has been steadily on the increase. The income of Municipalities in British India from octroi on animals taken for slaughter as also from slaughter houses has increased about 70 per cent. in the course of the last 10 years, while the increase in export of hides has been 20 times more in the course of the last 50 years. The figures of slaughter that have been collected by the All-India Cow Conference Association indicate that the number of the cattle annually slaughtered for food within British India would amount to a figure of about 6 millions. With regard to the slaughter of the cattle killed for the purpose of the dried meat trade, it is difficult to obtain correct figures. The Honourable Lala Suhkbir Sinha of Muzaaffarnagar, United Provinces, has collected figures from a number of districts in the United Provinces, and these alone amount to  $1\frac{1}{2}$  lakhs a year. The Association has collected figures of dried meat exported *via* Howrah from the Agent of the East Indian Railway Company, and this shows that about 2 lakhs of maunds of dried meat are annually exported *via* Howrah. The trade is largely carried on in other provinces as well, such as the Central Provinces, Bihar, Berar and Bombay, and there is every reason to think that the total figures amount to over 5 lakhs.”

Then, Sir, as regards the insufficient number of cattle in this country as compared to other countries, the deputation said in their memorial :

“The number of the cattle in the country is inadequate as is evident from a comparison of the proportion of the cattle to population in India with that in other agricultural countries of the world. Thus, while the number of the cattle per 100 of population in India is only 59, it is 74 in Denmark, 79 in the United States of America, 80 in Canada, 120 in Cape Colony, 150 in New Zealand, 259 in Australia, 323 in the Argentine Republic and 500 in Uruguay.”

Now, Sir, in reply to these arguments advanced by the deputation His Excellency Lord Reading said :

“It is hardly relevant to compare, as was done in your memorial, to Lord Chelmsford, the number of cattle per hundred of population in India with similar calculations in countries like Australia, Argentine and Uruguay sparsely populated and largely pastoral countries, one of whose main industries is cattle breeding for the export trade in meat.”

The argument advanced by Lord Reading seems to be a peculiar one. I cannot understand why His Excellency refrained from making a comparison of other countries like Denmark and New Zealand, which cannot be called pastoral countries. Perhaps because it was inconvenient to do so.

Then, Sir, it is often contended that the cattle which are slaughtered in this country are old and useless. His Excellency Lord Reading also thought in the same way when he said to the deputation :

“For the economic point of view let me ask you to credit with honesty the opinion of those persons who tell you that India perhaps suffers not from the fewness but from the multitude of her cattle. . . . Above all, what is wanted is not an increase in the number of cattle but an improvement in their quality. . . . I myself shall not get dismayed if an improvement in quality is accompanied even by a reduction in numbers and a saving in fodder and pasture, which is at present largely consumed by useless animals.”

Regarding this argument of His Excellency, Sir, I will not personally say a word whether useful or useless animals are slaughtered. I shall only quote

the Executive Councillor of Lord Reading himself. I mean Sir B. N. Sarma, who was in charge of Agriculture at that time.

Speaking in this House in 1921 on the Resolution of Mr. Sukhbir Sinha he said :

"The cities of Bombay and Calcutta do not make a full use of their good cows they import, but send them to the slaughter house without making full use of them as milkers."

I am further supported by many eminent authorities in this respect. From a report of the Superintendent of the Markets and Slaughter House, Bombay, in 1920, it can be seen that :

"32 per cent. of the animals slaughtered during the period of 15 days were from 3 to 8 years of age—the most useful age for milking animals."

The report of the Committee appointed by the Bombay Government on this subject in 1922 contained the following :

"To safeguard the supply of good milch cattle, it is essential to take steps to reduce their slaughter. Such cattle are reared in the country by one class of person and then purchased in the towns by another rich class who milk them for a short time and then sell them off to the butchers. In this way the best milch cattle in the country find their way to Bombay where they are soon slaughtered and their calves lost."

Dr. Harold H. Mann, the Director of Agriculture, Bombay Presidency, says :

"I think very strongly that the slaughter of the milch animals in Bombay and other large cities is endangering the future supply of the best milking animals and tending to deplete the best milking strains in the country, and the matter demands early and vigorous action."

Mr. C. F. Payne, I.C.S., Chairman, Calcutta Corporation, writes :

"The best cattle in the prime of their lives are sent to the towns where they are usually handed over to the butchers. Thus, instead of living a useful life of 10 or 12 years she is put an end to at the end of her first or second lactation period."

Mr. R. C. Wood, M.A., Director of Agriculture, Madras, in his note on cattle says :

"Most of these cows (which come to supply the demands of the Madras milk trade) go to the slaughter house as soon as they run dry and their calves are allowed to die of neglect."

Mr. S. Milligan, Imperial Agriculturist, and Mr. C. M. Hutchinson, Imperial Agricultural Bacteriologist, Pusa, in their note on Dairying in India, write :

"There is little doubt but that the town dairies are producing a serious drain on the best milking cattle of the country."

Mr. Smart, Deputy Director of Agriculture, Bombay, and Mr. Hamilton, Director of Agriculture, the Punjab, confirm the same opinion from their experience.

And, Sir, what has been the result of this indiscriminate slaughter ? Bad agriculture on account of the smaller number of bullocks, bad physical condition of the people of this country because they are not getting sufficient nutrition for their bodies, and consequently terrible infant mortality.

Regarding the insufficient number of bullocks for the agriculture of this country, the Deputation pointed out :

"The number of bulls and bullocks is not sufficient to bring properly under cultivation the arable land of the country. The maximum area which a pair of Indian plough

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cattle can till during a season is 5 acres; the cultivated area in British India is about 228 million acres, and the total number of the plough-cattle is about 49 millions: deducting 25 per cent. for draught and other like purposes, and 25 per cent. as old, infirm, sick and immature, there remain only about 24 millions of cattle available for cultivating about 228 millions of acres, that is to say, a pair of cattle has to till about 19 acres, whereas this would require in the ordinary course 4 pairs of cattle. This in a large measure accounts for the poor outturn of crops in India as compared with that of other countries".

As regards the crops, what do we find on account of this smaller number of cattle? We find that while in India the average return per acre is 11·5 bushels, in Denmark it is 33, in Spain it is 14, in France 13·15, in Great Britain 29·8, in Italy 13·7, in Norway 23, in the Netherlands 30, in Sweden 23, in Switzerland 32·5, Canada 17, in the United States 14, Japan 32 and Egypt 29. His Excellency in replying to the Deputation in this respect said:

"I think we must leave it to the cultivator to determine the number of cattle which he considers essential for the cultivation of his land."

A most astounding statement: When the question of political reforms comes, the Government and their representatives say that they are the trustees of the 320 millions of people of this land. But when the question of their welfare comes and when the question of the poor agriculturists arises, and when the question of the welfare of the 72 per cent. of the population which is dependent upon agriculture is brought up, the most responsible person on behalf of Government makes such an astounding statement. I hope His Excellency Lord Irwin, who is famous for his agricultural sympathies, will reconsider the statement which has been made by his predecessor, Lord Reading.

Then, Sir, as regards the health of the people it is needless to say that the bulk of the Indian population is both by custom and by religion vegetarian; it is also vegetarian on account of economic necessity. Even the Muhammadan population which has no objection to taking beef is, on account of the economic necessity, vegetarian to a great extent, at least in the mofussil.

I know in many parts of the country in the mofussil more than three-fourths of the Muhammadans live on vegetarian food, and they do so because they cannot afford to get meat more than once or twice a month. In the villages where most of our population lives, it is needless to say that there is not a single house, be it of Hindus, Muhammadans, or of Christians, or of any other community, which does not require milk or its products. It has been pointed out not once, not twice, but times without number that the total supply of milk in this country is not adequate for even one-eighth of our population. We have about 50 millions of milch cattle in this country, which give about 60 million pints of milk every day, which comes to about  $\frac{1}{4}$  pint per head, while it has been proved that at least 2 pints of milk per head is required for normal health. On account of this scarcity of milk, the price of milk has gone up beyond all proportions. His Excellency Lord Reading thought that the price of milk had risen in proportion to other articles when he said:

"The rise which has taken place in the price of milk is to be regretted, but there is no evidence that it is due to any deterioration in the quality or quantity of cattle. In point of fact, its price has simply risen in sympathy with that of other commodities."

But, Sir, the fallacy of His Excellency's argument will be apparent when we compare the prices of other articles of food and the price of milk. If we

compare the prices, what do we find ? In 1857 the price of wheat was 39 seers to the rupee, in 1890 it was 25 seers, and in 1918 it was  $5\frac{1}{2}$  seers per rupee. The price of gram in 1857 was  $51\frac{1}{2}$  seers, in 1890 it was 28 seers and in 1918 it was 7 seers. The price of rice in 1857 was  $18\frac{1}{2}$  seers, in 1890 it was 12 seers and in 1918, 4 seers to the rupee. The price of milk in 1857 was 4 maunds or 160 seers, in 1890 it was 64 seers and in 1918 it was 4 seers to the rupee. After 1918 the prices of wheat, gram and rice have gone down, but the price of milk is still 4 seers a rupee, or in fact it has increased as in big towns we cannot get pure milk even at the rate of 2 seers a rupee. Owing to this high price of milk the poor people cannot buy milk, and because they are not getting good nutrition for their bodies they are becoming weaker and weaker every day and therefore more amenable to diseases. That is the reason why to-day the mortality in India is much higher than that of any civilised country in the world. What do we find when we compare the Indian mortality with that of other countries ? The average annual death rate per thousand of population in India is 38·2, in Japan 20·9, in England and Wales 17, in Scotland 17, in Ireland 18, in Denmark 15·5, in Norway 15, in Sweden 16, in Holland 17 and in New Zealand 9·5.

Now, Sir, if we take the infant mortality of India in comparison the figures are appalling. It has been estimated that about 20 lakhs of babies die here mostly of preventible causes and specially owing to the scarcity of milk. When I say so, I am supported by no less an authority than Colonel Mactaggart, Sanitary Officer of the United Provinces. He says :

“ By cheapening the price of the milk so as to bring it within the reach of the poorer classes more would be effected towards reducing the infantile mortality than the presence of any number of trained *dais* would accomplish.”

Nowhere else in the world do so many children die as in India. What do we find when we compare the infant mortality of India with that of other countries ? The average annual death-rate, per 1000 of population of children under one year of age in India is 260, and between 1 and 5 years is 67·3, while in Japan the deaths between 1 and 5 years of only 31·99. In England and Wales between 1 and 5 years it is 22 and under one year it is 172. In Scotland, under one year it is 145 and from 1 to 5 years it is 22. The figures for under one year and between 1 and 5 years for other countries are as follows :—

						Under one year.	1—5 years.
Ireland	..	..	..	..	..	123	17
Denmark	..	..	..	..	..	136	11
Norway	..	..	..	..	..	102	12
Sweden	..	..	..	..	..	102	12
Holland	..	..	..	..	..	50	..
United States	..	..	..	..	..	58·8	..
New Zealand	..	..	..	..	..	32	..

What have the Government done to meet this most deplorable condition ? They have done nothing. Sir, the Government want to improve the quality of the cattle. I am one with them in this respect. I think the total milk supply will be enhanced by improving the breed and the quality of cattle, but



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where are the bullocks to come from for the agriculturists? If the agriculturists are not to be left to themselves according to His Excellency Lord Reading, the number of bullocks also must be increased and this can be done only by stopping this indiscriminate slaughter of cows. Regarding the slaughter His Excellency said :

“ The slaughter of cattle and especially of cows is a subject bristling with difficulties, owing to its close connection with the religious belief and feelings of a large part of the population.”

Further on he said :

“ The bitterness of religious differences has in modern times largely given way to a broad-minded toleration and I only ask that this spirit of toleration may be observed whenever the question of cattle slaughter is discussed. Respect one another's religious beliefs but while striving as far as possible not to offend against them, do not let any man try to force his own upon another man.”.

The deputation which waited on His Excellency merely dealt with the question from the economic point of view. I do not know what was the underlying motive of His Excellency in touching on this matter from the religious point of view because, Sir, the deputation did not wait upon His Excellency to urge this point of view and it contained Muslim members also. His Excellency himself said :

“ Though I appreciate the motives which must have induced you to avoid the discussion on this aspect of the matter it is impossible for me to refrain from some mention of it.”

Because His Excellency mentioned something about this, I also want to say a few words in this respect. Let me at the outset tell the House that I am not a Maulvi or a Maulana, and when I speak of the Muslim religion I shall only quote a few Muslim authorities. The *Fatwa-i-Humayuni* in Volume I, page 307, says :

“ Slaughter of the cow is not included in the usages and religious practices of Islam.”

Then, Sir, the following fatwa was issued under the signature of Maulana Abdul Hasan, Mohammad Abdul Aye, Mohomad Abdul Wahab, Abdul Aya Mohammad, Abdul Hamid and Qazi Mohammad Hassain :

“ Sacrifice of the cow is not necessary : if a person gives it up, he does not commit any sin. It will make no difference in the faith of a Muslim who does not eat beef or kill a cow. There should be no slaughter of the cow when the intention is to avoid breach of peace, especially in the places where there is an apprehension of disturbance and creation of bad feeling, it is better to abstain from it in spite of one's conviction in his faith.”

History repeats the same thing. Even under Muslim rule the slaughter of the cattle was prohibited, and when I say so I am supported by an eminent Muslim authority, Dr. Syed Muhammad, Ph. D., who has said in his pamphlet “ Cow protection under Muslim rule ”.

“ From the very inception of Muslim rule a special tax was imposed on butchers for the slaughter of cows to the extent of 12 Jetal per cow.....

This tax continued for two hundred years after the establishment of Muslim rule in India right up to the time of Feroz Shah Tughlak.....

When the Moghuls established their rule in India and Baber ascended the throne, he wrote out a confidential will for his son Humayun, in which he exhorted him to prevent the killing of cows.....

The original copy of this document is preserved in the State Library at Bhopal....

Akbar issued orders totally prohibiting the slaughter of cows throughout his vast dominions. There is detailed mention of it in the *Ain-i-Akbari* and other books ”.

The famous historian, Sir Vincent Smith, says the same thing in his famous book “Akbar, the Great Moghul”. He says that cow slaughter was totally prohibited and capital punishment was imposed for the purpose of preventing it. Even to-day slaughter of cattle is prohibited in many Muslim States.

Even admitting for argument's sake that cow slaughter is necessary for Muhammadans, my Resolution does not ask for the total abolition of slaughter. What I ask is that the indiscriminate slaughter of cattle should be prohibited and this is for the benefit of both Hindus and Muslims. In fact in my province, the Central Provinces, the executive order for not killing cattle up to 9 years of age is the outcome of the recommendation of a Muslim gentleman, who is respected both by the Government and the public, I mean Khan Bahadur Syed Zakar Ali who has vast influence in my province and who commands a large following of Muslims and who is a retired Deputy Commissioner of Government. In his report on the amendment of the Slaughter House Act in the Central Provinces he said :

“ It is necessary for the carrying out of the undertaking given by the Government to provide for the protection of animals useful for agriculture and milking purposes that the minimum age for slaughter of all animals except sheep and goats should be raised to nine years ”.

Further on he said :

“ In order to obtain a rule which can be worked with absolute certainty 9 years has been accepted as the proper limit up to which slaughter should be prohibited. It is considered that the greater proportion of useful animals now slaughtered will be found under 9 years of age and that the fixation of age at 9 will save the majority of the animals being sacrificed ”.

Then, Sir, in 1921, when my Honourable friend Lala Sukhbir Sinha moved his Resolution on this subject in this very House, my Honourable friend Sir Umar Hayat Khan supported the Resolution and said that the cutting down of shady trees and the killing of milch cows is prohibited in his religion. He voted for the Resolution along with two other Muslim Members of this House, Syed Raza Ali and Sir Zulfikar Ali Khan. That Resolution wanted to stop all slaughter for food purposes.

In most countries, Sir, there is a law for game preservation ; that is for the protection of birds and fishes and females of many animals. Good shikaris like my Honourable friend, Sir Umar Hayat Khan; and many others are keen on the preservation of wild animals in this country also. May I appeal to them to extend the same indulgence to the cattle which are of the greatest importance to this country both to Muhammadans and to Hindus ?

In conclusion, Sir, I would once more point out that I am not moving this Resolution on any religious or humanitarian grounds. I know, Sir, that at this time a conference for uniting the two great communities is being held in Simla and I know that this question is also being discussed by that conference. I have not moved this Resolution to embitter the feelings of Hindus and Muhammadans in any way. I am myself, Sir, a staunch advocate and believer of Hindu-Muslim unity, and I would never have brought this Resolution if I had not believed that it is for the equal good of both the communities. I have

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brought forward this Resolution purely on economic grounds and I appeal in the name of the agriculture of this country, in the name of crores of poor peasants, in the name of the vital health of the nation, and in the name of the millions of babies of all communities born and unborn, that this Resolution may be accepted, so that India may become once more a prosperous country, a land flowing with milk and honey. I am sure, Sir, that when my Muslim friends of this House voted for a Resolution which wanted total prohibition of slaughter for food purposes this Resolution will be carried in this House. With these words, Sir, I commend this Resolution for the acceptance of this Council.

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH** (Education, Health and Lands Member): Sir, my objections against this Resolution may be summed up in three words: it is inexpedient, impracticable and premature. I say inexpedient and I use that word advisedly. From the trend of the speech of my Honourable friend, it is quite apparent that he has laboured to convince the Muslim Members of this House, and I take it the Muslims outside this House also, that in bringing forward this Resolution he was in no way actuated by any intention whatsoever of raking up feelings between the two communities. But, Sir, may I ask him whether he regards the present as an opportune moment for the purpose of starting a controversy over a subject which is, if I am informed rightly, one of the main issues for the consideration of the Unity Conference which is sitting now in Simla? May I not, in the interest of the fair name and the restoration of the reputation of the two communities for amity and goodwill and good fellowship, warn him with all the earnestness of which I am capable that he has unfortunately chosen a very bad moment for the discussion of this controversial subject? If the handful of my Muslim brethren who are gathered in this Chamber were the only judges of his intentions, I have not the least doubt that we shall acquit him of any intention of fomenting the ill feelings which now prevail and of which we have proof that they exist in an acute form. But, Sir, the man in the street has got to be kept in mind, and does he hope to influence him with his noble ideas that in bringing forward this Resolution he was by no means actuated to hurt the feelings of the Muslim community, that he did not want to prohibit the slaughter of animals for religious purposes but that his purpose merely was to secure the economic prosperity of India? I am sorry that he has read the conditions in India rather wrongly and that he is not conversant with the present day conditions and feelings prevailing in the country.

I said, Sir, it was impracticable and I emphasise that word. What is it that he asks the Governor General in Council to do? He asks the Governor General in Council to take immediate steps to prevent the slaughter of milch cows, buffaloes and draught animals used for agricultural purposes up to ten years of age. There is to begin with the objection which the present constitution provides, namely, that veterinary and agriculture are provincial transferred subjects. Not only that: the slaughter of animals is entirely a matter provided for by Municipal and Local Board Acts. The slaughter of animals is controlled and regulated by bye-laws framed by municipalities and local bodies. The Governor General in Council, therefore, does not come into the

picture at all. Then, has he paused to consider the scheme which he has to devise for the purpose of giving effect to this Resolution? Has he for a moment considered what an army of staff he would ask India to entertain for the purpose of carrying into effect this Resolution? Does he contemplate that this order should go forth from the Governor General in his executive capacity, or does he intend that this order should be the result of any legislative enactment which should be passed prohibiting the slaughter of milch cows, buffaloes and draught animals used for agricultural purposes up to ten years of age? If the former, I shall be glad to know under what authority the Governor General in Council can do so? Assume that an executive order is issued under the terms of the Resolution and assume again that it is violated. What will be the penalty against those who violate the order? Then assume that we do it by legislation. What is the organisation which exists at the present moment to see to it that this large order which is conveyed by means of this Resolution is duly carried into effect? Before a single cow, buffalo, or draught animal is proposed to be slaughtered, three facts have got to be certified to, firstly, that it is not a milch cow, secondly, that the buffalo or draught animal is not used for agricultural purposes, and, thirdly, that neither of these animals is more than ten years of age. Well, have I to summon a board of veterinary officers for the purpose of deciding the age of the animal before it is slaughtered? Have I to call upon every individual who wishes to slaughter an animal for any necessity to arm himself beforehand with a certificate from some competent authority that it is not a milch cow, that it is not an animal used for agricultural purposes and that it is not above ten years of age? I merely mention these things to show that my Honourable friend has not carefully thought out his Resolution and that he asks us to give our support to a motion which, on the face of it, appears to be impracticable. Lastly, I said, Sir, the Resolution was premature. I am not quite sure whether Honourable Members of this House are fully aware of the steps that are being taken from time to time by the Government of India and the Provincial Governments to tackle this very important problem of improving the stock and the breed of cattle and the value of cattle and milk produce to the people. I shall just enumerate a few instances to show that the Government of India are fully alive to their sense of responsibility in this matter and that they have already set their hearts on the improvement of the stock of animals used for agricultural purposes and for milk purposes. In the first instance, I would invite the attention of the House to the fact that the Imperial Department of Agriculture has been for some years past concentrating on the improvement of dual-purpose breeds at Pusa by a system of selection based on milk records. By a dual-purpose breed I mean a breed in which there is a guarantee that the female possesses useful milking qualities and the male good draught qualities. The same procedure is now being followed at the Bangalore, Wellington and Karnal farms. Bulls of good pedigree are being supplied to cattle owners for stud purposes, and the Imperial Department of Agriculture distributes through its annual sales pedigree cattle of high milking capacity. Work on these lines is also being done at numerous Provincial Government farms. The Government of India have, as Honourable Members may be aware, recently introduced training classes in Bangalore, in dairying and animal husbandry. They are also tackling the problem of stock raising and of condensation of milk at the Karnal farm, and with a view to seeing that their steps in this direction are

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systematised and there is something like continuity of interest evinced, and more particularly, to co-ordinate the efforts of the various Provincial Governments and others who take an interest in cattle breeding, they convened a Cattle Conference at Bangalore recently and have, on its recommendation, established a Central Bureau of Animal Husbandry, under the control of the Agricultural Adviser to the Government of India. The functions of this Bureau briefly put are these,—the collection and dissemination of information concerning cattle breeding and allied subjects; to assist in the disposal of surplus pedigreed stock, especially from Government herds; the standardisation of method of milk recording and breed records to be adopted by Local Governments and Indian States; the maintenance of general herd books of breeds or of milch cattle as distinct from specific breeds found in more than one province or State; the encouragement of the sale and use of pedigreed stock; the keeping of the cattle breeding departments of Local Governments and Indian States and those interested especially in scientific cattle breeding in touch with each other. Subsequently, questions in regard to improvement of cattle and kindred matters were fully discussed by the Board of Agriculture in Pusa in 1925, and they have made a set of recommendations in that direction. Some of these recommendations related to the steps to be adopted by Provincial Governments in that direction, and the Government of India have communicated those recommendations to the Provincial Governments concerned for necessary action. There are a few recommendations on which probably the Government of India themselves will have to take action, and consideration of these recommendations has had to be postponed pending the report of the Royal Commission on Agriculture which we expect to receive in the near future.

Then, Sir, my learned friend has tempted me by quotations of statistics and by instituting a comparison thereon between one country and another, to quote a few figures myself. His general complaint was, if I understood him aright, that as a result of this slaughter of animals for food purposes, which include of course export of meat to other countries, the number of cattle in the country is diminishing from time to time. But, Sir, he is speaking without the book. I may at once appease his anxiety by convincing him that that is not so, but that the cattle population in India has been showing a steady increase in spite of the factors which he deplures. In the year 1901-02 for which figures are available, the total cattle population of India—I am not including Indian States—was 65 millions. This did not include figures for Bengal as they were not available. Even assuming that we could include the figures for Bengal, it could not go beyond 80 millions all told.

Well, as the system of recording statistics in regard to the cattle wealth of India was not very satisfactory in the past, the Government of India instituted a regular system of taking a census of the cattle, and in the year 1919-20 we had the first cattle census. The figures then showed that the total number of cattle in India was 146 millions. A second census was taken in the year 1924-25, and the cattle wealth of India then stood at 151 millions. Is it, therefore, fair to argue that the number of cattle in India is steadily decreasing, and that this decrease is due to the fact that a few cattle are being slaughtered here and there?

Then, my Honourable friend instituted a comparison with other countries in regard to the number of cattle which the landholders possess on an average. Somehow, I anticipated that my Honourable friend would do so, and I therefore took the trouble to prepare a very instructive table which furnishes this information and proves that, barring South Africa and Australia, for which special reasons exist, and which I think my Honourable friend himself referred to, namely, that these two countries are sparsely populated, that a large portion of the country has still to be developed for which purpose immigrants are being attracted thereto and that cattle breeding is resorted to in those countries more or less as a national industry; therefore barring these two countries, we are happy to find that India stands almost first. I have divided the table into two heads. The first refers to the number of cattle to every 100 acres of culturable land, and the second shews the number of cattle to every 100 people.

Country.	Number of cattle to every 100 acres of culturable land.	Number of cattle to every 100 people.
Germany .. .. .	24	27
Italy .. .. .	12	15
France .. .. .	17	36
Canada .. .. .	13	99
United States .. .. .	17	51
Japan .. .. .	9	2
India .. .. .	35	57

There is thus no reason to deplore either from the standpoint of the total cattle wealth of India or from the standpoint of the number of cattle to the culturable land or to the total population, that we are in any way inferior to other countries which I have enumerated.

Well, Sir, after having said that, I think I must emphasise the fact that it is the opinion of many experts who have thoughtfully considered the problem, that what India is suffering from is not a numerical scarcity of cattle, but a superfluity of useless cattle. The remedy, therefore, is not the prohibition of slaughter, as no sane man will slaughter a useful animal, but an improvement of stock on the lines that I have indicated above. As my Honourable friend has quoted certain opinions from the Bombay Presidency, I might be permitted to draw his attention to a very interesting and useful book which has been published by Mr. Keatinge on the "Rural Economy of the Bombay Deccan". I would only make one small quotation from that very useful book to indicate that the position, whether in Bombay or anywhere else, is not that the agriculturists are suffering actually from want of cattle, but that they are maintaining more cattle than they could reasonably maintain, and that a good proportion of them, at any rate, happen to be useless cattle which have served their time. This is what Mr. Keatinge says regarding cattle taken to the Slaughter House :

"Almost exceedingly worn out, old bullocks, maimed and malformed beasts, and barren cows. It will be realised that it is not the 50,000 Deccani which are slaughtered

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annually that cause loss to the cultivator, but the 80,000 useless beasts which are not slaughtered."

Finally, Sir, I again emphasise that the Resolution is premature, because, as the House will remember, this is a question which is engaging the attention of the Royal Commission on Agriculture, and I hope Honourable Members will remember the terms of reference on which that Commission was constituted and on which we are expecting its report. According to clauses (a) and (d) of the terms of reference to that Commission, we are hoping that it will favour us very soon with its recommendations in regard to the whole question of the cattle wealth of India. We were discussing in this House the other day a cognate question, namely, the conservation of the manurial wealth of India, and intimately connected with that problem is the question of improving the stock and breed of the cattle wealth of India, and when those recommendations are received we shall give the matter that attention which its importance deserves. In the end, I once more appeal to the Honourable Mover that after having heard the efforts—the serious efforts—nay the sincere efforts which are being made by the Government of India and the Provincial Governments in that direction, and the few remarks which I have made showing that from time to time the necessary remedies which should be applied for the purpose of safeguarding the cattle wealth of India are being resorted to by the authorities concerned, and furthermore in view, particularly, of the very delicate nature of this Resolution and the repercussions that are likely to result therefrom, I hope that my Honourable friend will not press this Resolution.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): If I intervene at this early stage of the discussion, I do so deliberately and with a view to request my Honourable friend, Seth Govind Das to whom I have already made a private appeal, to see that this discussion is not continued. I wish all people who handle this question were able to do it in the exceedingly tactful, clever and able manner in which my Honourable friend has dealt with the subject. Even though he has been able to quote my gallant friend, Sir Umar Hayat Khan, in support of this Resolution...

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab: Nominated Non-Official): I do not think so. He should show me.

THE HONOURABLE MR. G. A. NATESAN: I was going to say that even if there was an assurance that my gallant friend was going to take a very reasonable and serious view of this question,—even with that support I would not like that the discussion of this question should be continued.

I think the object with which he brought forward this Resolution has been attained, and after the very clear and exhaustive explanation given by the Honourable the Leader of the House, who is in charge of this subject, I do not think it will serve any useful purpose to continue the discussion. As a publicist, it has been my lot to be connected with, and to take an active part in, this Hindu-Muslim question in some way or other, and any one who knows something of the history of this question ought to feel convinced that of all times, the present is the least fitted to take up a discussion of this character. It so happens that I come into close touch with people who are daily attending the Unity Conference which is being held

12 Noon.

here, and any one who has bestowed the slightest attention to this question ought to realise the enormous difficulty that the leaders of both communities have to contend against in discussing some of these questions with that calmness, deliberation and judicial temperament that is required. Though both sides are influenced by patriotic considerations, still passions are roused and the best efforts of all are needed to arrive at a satisfactory solution of the difficult questions involved. I believe my Honourable friend Seth Govind Das was also present at the Joint Session of the Council of State and the Assembly when His Excellency the Viceroy made a very passionate and noble appeal for the settlement of these communal differences. He made one significant remark, namely, that even if we fail there is no harm because these questions have to be discussed again and again.

As I said before, my Honourable friend, Seth Govind Das made an admirable speech. Though he said at the outset that he will not draw religion into the discussion, he could not resist the temptation to do so, a temptation which is so natural. If I attempted it, I should have fallen a victim to that temptation. In most of these matters there is an opposite view. As the Honourable the Leader of the House said, there is an opposite view about statistics. There is an opposite view about the Koran and even Sir Umar Hayat Khan, my esteemed and gallant friend, now says that he did not say what he is supposed to have said. In these circumstances no useful purpose would be served in pursuing this discussion. I appeal to my friend Seth Govind Das once again. In so far as his object was to draw attention to the subject he has succeeded. If the Honourable Member likes he can meet the Honourable the Leader of the House in his office privately and contest his facts and figures, but having regard to the enormously difficult and delicate nature of the subject, it would not promote amity if we pursue this subject. May I add one word? If the problem of Hindu-Muslim unity is solved, this question would have been half solved.

**THE HONOURABLE SETH GOVIND DAS:** Before I withdraw this Resolution, I wish to say a few words in reply. . . .

**THE HONOURABLE THE PRESIDENT:** If the Honourable Member wishes to make a reply, he will understand that the debate will have to continue. The suggestion has been made to him twice already, a suggestion which I gather from the applause I heard has met with approval from all sides of the House that he should withdraw the Resolution. The object which the House has in view is not so much, I understand, a desire to avoid coming to a decision on this important and somewhat controversial matter as a desire to avoid this discussion altogether at this time. Therefore, if the discussion is prolonged, the object of the House is not achieved. If the Honourable Member wishes to withdraw, he should ask the leave of the House to do so, but he cannot reply so long as several other Members are rising to continue the debate.

**THE HONOURABLE SETH GOVIND DAS:** Under these circumstances. I have no objection to withdraw the Resolution.

**The Resolution was, by leave of the Council, withdrawn.**



## RESOLUTION *RE* CHEAP TRANSPORT OF AGRICULTURAL AND OTHER PRODUCE THROUGH WATERWAYS.

THE HONOURABLE RAO SAHIB DR. RAMA RAU (Madras : Non-Muhamadan) : I beg to move :

“ That this Council recommends to the Governor General in Council that an expert Committee be appointed at an early date to enquire into the possibilities for cheap transport of agricultural and other produce through waterways in India and suggest ways and means to provide and improve such communications.”

India is a country of vast distances and is endowed by Nature with many navigable rivers and streams, which can be turned to advantage for purposes of irrigation, as a means of communication and to generate electric power for industrial advancement, etc. Unfortunately, the Government have not been able to show any rapid and substantial improvement in any one of these directions in the past. The irrigation projects are scanty, while the Hydro-Electric schemes are in embryo. The waterways, as means of communication have, on the other hand, been woefully neglected. It has always been recognized that water transport is cheaper than land transport, but the Government's apathy—not to use a stronger expression—which has even allowed some of the previously navigable ports to be silted up, has deprived this country of developing to its full the natural and economic outlets for its trade on its very long coastal lines. The railway as a means of transport has not yet penetrated into the interior of India. Moreover, we cannot depend entirely on railways for transport purposes. It is too costly for the poor people of this country. The roads are poor and insufficient and transport through them is costly and risky too. According to the census of 1921, in Bengal 1 mile of road serves an area of 2·3 square miles, in the United Provinces, the area served by the same length is 3·1 square miles, in the Punjab 4·0, in Bihar and Orissa 4·4, in Bombay 4·5, in Madras 5·3, in Assam 5·9, in the Central Provinces 12·5, and in Burma 18·4. So, except in Bengal and perhaps in the United Provinces the road transport is not so easy nor so cheap. Waterways are best suited for India as the cheapest means of communication. We have got an abundant coastal line and we have got also abundant rivers which, if judiciously manipulated, will yield good results. But the railways are the worst rivals of waterways.

“ Some of the railways have initiated the deliberate policy of heavily reducing the railway rates from port to port with a view to divert the sea-traffic to the route. If the railways were to reduce the rates not only from the port but also from the interior, one could understand their object of giving a cheaper service for the purpose of seeing the interests of trade and consumers. But when we consider that the rates were reduced from port to port only and are kept at a very high level from the interior, the natural conclusion cannot be resisted that the policy has been deliberately laid down for the purpose of killing the water transport by diverting the sea traffic to the rail route. Once the railways are successful in their design, they would again raise the rates from port to port with the result that the country would be deprived of the services of the more economic water transport for years to come.”

This was what Mr. Norattam Mooraji had said at the annual meeting of the Scindia Steam Navigation Company, and he is not far from the truth. It is now almost two years since the Report of the Mercantile Marine Committee was submitted to the Government, and nothing could be a more eloquent testimony of the way in which Government move slowly, if they move at all,

when the larger interests of the Indian industries are concerned than their continuous neglect even to form their conclusions on the recommendations of this important Committee.

In my own province, the fate of the Swadeshi Steam Navigation Company, at Tuticorin several years ago is sufficient proof, if proof were needed, of the way in which Indian nautical enterprise has been crushed by the combined efforts of British capitalism and British Imperialism. As an example of neglect of an inland waterway, we have the sad tale of the Buckingham Canal to tell. This canal was constructed by Government at a capital outlay of about 136 lakhs. The foresight of a kindly satrap gave Madras that highly useful link between North and South of this Presidency and this canal was intended to serve as a useful means of transport between Cuddalore and Cocanada. From the figures available between 1892-93 and 1901-02, the cost of maintenance of this canal came down from Rs. 80,000 to Rs. 50,000 per annum, while the income during the same period went up from Rs. 47,188 to Rs. 1,14,785. Since 1901-02 the income began to decline while the expenditure mounted up. The expenditure is now over 2 lakhs on this canal, while the income is about Rs. 80,000 per annum. The decrease in the income is due to difficult navigation as a result of its having been horribly silted up and not being used for many months in the year. The present system of removing the silt by manual labour is extremely unsatisfactory and is not at all conducive to economy. Dredging has not been resorted to, though it is absolutely necessary to maintain the canal with about 3 feet of water. That this canal runs counter to the railway interests is, I am afraid, the sole reason for its neglect by Government. Owing to gradual disuse of this cheap means of communication, the prices of some of the commodities in the areas served by this canal have gone up. The railway line is situated at a distance of 10, 20 and even 30 miles from this canal area, and naturally transport charges must be higher and the prices of food-stuffs, heavier. The plight of the Buckingham Canal to-day is simply heart-rending. It is high time, therefore, that greater attention should be paid to the waterways. In all civilized countries waterways as the cheapest means of transport have come to be recognised. The French President recently opened a historic canal linking the seaport of Marseilles with the Rhone. India alone is stagnating and even moving backwards in the matter of transport facilities. Its railway system is still imperfect, its roads are insufficient, its waterways neglected, and its aerial service is yet to commence. Since the reforms, the Central Legislatures have been taking very keen interest in the matter of the development of railways. Last Session, this Council passed a Resolution for the formation of a Road Board, to look to the development of roads. The time has come when we should look round and see whether our waterways should not also be taken in hand at once, and developed side by side. It is with this end in view that I am moving this Resolution to-day, and I hope the Council will unanimously accept it.

THE HONOURABLE MR. A. C. McWATTERS (Industries and Labour Secretary): Sir, the Resolution which has been moved by my Honourable friend certainly raises a subject of very great importance for India. I agree with him that where nature has provided natural waterways and where they can be kept up at reasonable expense they are probably the cheapest form of transport; and even

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in these days with the development of motor transport and railways there still is a great field in India for the preservation and development of waterways. But the subject before the House is whether the time is now ripe for the appointment of a central committee to deal with waterways, and I listened with some attention to the Honourable Member's speech to see what reasons he gave for suggesting the appointment of such a committee by the Central Government.

I think it is important that we should get this subject in its proper perspective, and with that object I hope the House will allow me to mention one or two matters of local interest in connection with this subject, because most of these waterway questions are local and in some cases they have roused a good deal of local feeling. There are, I think, three provinces in India where transport by internal waterways is of the first importance. Over the greater part of northern India, with the development of irrigation, internal water transport has naturally become less important. But the first great province which is intimately concerned with this question is naturally Bengal. The whole series of waterways at the mouths of the Ganges, the Brahmaputra and the Meghna forms the main channel of communication between Eastern Bengal and Calcutta. The history of those waterways and the discussions regarding them are probably well known to many Members of this House. It was in the year 1921 that, in response to a question by the Honourable Sir Dinshaw Wacha, papers were laid on the table of this House giving the correspondence which had taken place in 1919 and 1920 between the Government of India and the Secretary of State with regard to the question of forming a waterways board for India as a whole, or for Bengal in particular. That correspondence gave the previous history of the Bengal waterways question and the decision came to then was that it was not desirable to form a waterways board for the whole of India or even for Bengal, but that the best line of action was to strengthen the Waterways Committee which existed and had existed for some time in Bengal by adding to it certain extra-provincial representatives so that the interests of provinces outside Bengal should be represented. Since that date the Bengal problem has mainly centred round the question of the construction of the Grand Trunk Canal. It is a question which has aroused a good deal of discussion in business quarters in Calcutta, and I may mention that at this very moment a Committee is sitting, which was appointed a few months ago by the Bengal Government, under the chairmanship of Sir Alexander Muir and representing practically all the big commercial interests in Bengal to consider this question of the Grand Trunk Canal and its relation to the improvement of waterways communication with Eastern Bengal. The problem is, I understand, a very acute one. The waterways are silting up and this big project of connecting Calcutta more directly with Khulna is one of the methods which have been proposed for putting this waterways communication again on a more satisfactory footing. But, Sir, as I have said it is a local question and has aroused a great deal of local feeling and local opposition, and it is certainly I think an instance of a case where local interests must certainly have the first say.

The next great province which is intimately concerned with waterways is Burma, and there the Burma Government have since 1923 had a Communications Board which has its own Waterways Committee. I received the other day

a communication from Burma giving me the latest information regarding the activities of the Waterways Committee. That Committee has held 13 meetings and has considered 33 proposals since it was constituted, in every one of which its advice was accepted by the Local Government. Among the schemes which have been accepted and put into force are included seven new works for the improvement of waterways costing Rs. 42 lakhs.

Further, there has been expenditure on five existing works costing 16 lakhs. There have been three experiments for the eradication of water hyacinth, a subject we were discussing the other day, on which the Local Government has spent  $3\frac{1}{2}$  lakhs. Another scheme relates to a headway under a railway bridge costing 7 lakhs and there are five further proposals for improvement of waterways now under consideration, costing 8 lakhs. I think that this summary indicates the activity shown by the Local Government and it also indicates that this is very largely a local question. I have no doubt that the advice of that local Waterways Committee which was accepted by the Local Government was the best advice possible.

A third province, perhaps not quite so important as the others in this respect, is the Honourable Mover's own province of Madras. There are three areas there in which waterways are important. First is the network of canals at the mouth of the Godavery and the Kistna, second is the Buckingham Canal to which the Honourable Mover referred—and here it may interest the Honourable Mover to learn that I received information only the other day from Madras that estimates for the improvement of the Canal are now under consideration by the Local Government—and third there is the canal system on the West Coast. In the old days this canal system used to run from Cannanore down to the boundary of Cochin. The northern part of this canal system from Cannanore to Tirur has been rendered more or less obsolete by the development of the South Indian Railway and is now practically in disuse, and the Railway carries the whole of the traffic. The southern part from Tirur to Cochin and the line of backwaters connected with the canals are still of great importance, and I am informed by the Local Government that these canals are now being deepened and a scheme for locking some of the sections is under consideration.

From this brief summary which I have given in order to put the whole subject in its proper perspective, I think the House will agree that most of these questions are strictly local questions. Indeed, the whole subject of inland waterways is a provincial subject, but I am not stressing the constitutional point, because one of the main reasons why the Government of India do not desire to accept this Resolution at the present moment is because it relates to a subject which has been definitely referred to the Royal Commission on Agriculture which is now sitting. The terms of reference to that Commission were fairly widely drawn, and among the subjects which they were asked to investigate in particular was "the existing methods of transport of agricultural produce," and until that Commission reports, the Government of India do not consider that they would be justified in superimposing a further expert committee to examine this question. As I have shown, there is a Board of Communications with a Waterways Committee in one province, and there is a Committee actually sitting to deal with one great project in another, and I think the Honourable

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Mover might rest content for the moment and await the result of the inquiry by the Royal Commission on Agriculture. I might just add that the terms of reference to that Commission did contemplate that, although they may not consider the distribution of subjects between the Central Government and the provinces, they would be at liberty—I am quoting the exact words—they would be at liberty “to suggest means whereby the activities of the Governments in India may best be co-ordinated, and to indicate directions in which the Government of India may usefully supplement the activities of Local Governments.”

If, therefore, on this subject of transport, they are able to make suggestions which would necessitate action by the Government of India, they will be perfectly at liberty to make these suggestions. I think that, in these circumstances, the Honourable Mover might agree not to press his Resolution at the present moment.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : In these circumstances, Sir, I do not press my Resolution.

The Resolution was, by leave of the Council, withdrawn.

## RESOLUTION *RE* PRIVILEGES AND IMMUNITIES OF THE CENTRAL AND PROVINCIAL LEGISLATURES.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadian) : Sir, the Resolution which stands in my name runs as follows :

“That this Council recommends to the Governor General in Council to urge upon His Majesty's Government to take steps to incorporate in the Government of India Act, when it is next amended, the privileges and immunities of the Central and Provincial Legislatures.”

My Resolution, Sir, has a short history. When the constitution of the Government of India was revised by the Government of India Act of 1919, the privileges of the Legislatures as a whole were not dealt with by the Act except in one particular. Section 67, sub-section (7) of the Government of India Act, 1919, secures freedom of speech to Members of the Legislature. Beyond that, the matter was not dealt with by the Government of India Act in any way. But the question of privileges and immunities of Members of the Legislature was brought before the Reforms Enquiry Committee over which your distinguished predecessor, Sir, Sir Alexander Muddiman, presided, and of which you also, Sir, were a member. I find that that Committee failed to deal with the question of privileges and immunities in a satisfactory manner. At page 75 of their report it is stated :

“It has not been suggested to us from any source that the Legislatures in India should be provided with a complete code of powers, privileges and immunities as is the case with most of the Legislatures in other parts of the Empire. The matter has been generally dealt with by the enactment of a provision in their Acts of Constitution enabling the Legislatures to define their own powers, privileges and immunities, with the restriction that they should not exceed those for the time being enjoyed by the British House of Commons. Eventually no doubt similar provision will be made in the constitution of British India. But we are of opinion that at present such action would be premature.”

The Committee went on to make recommendations on one or two small matters, exemption of Members of Legislature from sitting as jurors or assessors, immunity from arrest in civil cases during a Session of the Legislature and a week before and after. . . . .

The HONOURABLE MR. S. R. DAS (Law Member): 14 days.

THE HONOURABLE MR. V. RAMADAS PANTULU: The recommendation was for a week. Subsequently, when this matter was put through, it was extended, as my friend the Honourable Mr. S. R. Das has pointed out, to 14 days. With the exception of these small changes the question of privileges and immunities was not dealt with. But in one very important matter, a privilege enjoyed by the other Legislatures was sought to be interfered with by a piece of legislation through the Central Legislature itself. A Bill called the Corrupt Practices Bill, making it a penal offence for Members of the Legislature, either to offer a bribe or to accept a bribe in the course of the discharge of their functions as Members were sought to be enacted. With reference to that matter, the Committee, I am sorry to say, made a very retrograde recommendation. They said :

“ We are given to understand that there are at present no means of dealing with the corrupt influencing of votes within the Legislature. We are unanimously of opinion that the influencing of votes of members by bribery, intimidation and the like should be legislated against. Here again we do not recommend that the matter should be dealt with as a breach of privilege. We advocate that these offences should be made penal under the ordinary law.”

One or two matters like this were dealt with and certain opinions expressed, but no attempt was made to deal with the main privileges usually enjoyed by Members of the Legislatures in this report. Later on, Sir, I sought to bring up this matter before the Committee of this House which was appointed on the motion of my friend Mr. K. C. Roy, who is now in another place, to inquire into the privileges of Members of this House as individual members. That Committee met on the 30th August, 1926; and made its report on the 21st September, 1926. I raised the whole question of privileges and immunities before that Committee, but they disposed of my proposals in one small paragraph, which runs as follows :

“ It was decided by a majority that questions of general powers, privileges and immunities should not be discussed, but that the Committee by its terms of reference was only authorized to consider the question of privileges enjoyed by Members of the Council as distinct from the privileges of the Council as a body. The above two suggestions were therefore not considered.”

Therefore, I have thought fit to bring up this matter in the form of this Resolution, so that the matter may be placed before the Royal Commission or any other agency which will inquire into the revision of the constitution of the Government of India Act. Of course I am not now asking for any enunciation of definite principles or a catalogue of any particular privileges in the course of this debate. I am aware that even in England, it is not ordinarily possible for a casual reader or even a careful student of constitutional history to know exactly what the privileges are of the Legislature in England except in so far as they are either defined by Statute or decided by courts of law. Except in that way I am not able to gather all the customary privileges which are enjoyed by the House of Commons and the House of Lords in England.

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But there are certain very well-defined privileges with a few of which I shall deal and urge upon the attention of Government the need for embodying some of them, in such form as may be finally decided upon, in the Statute to safeguard the rights and the privileges of the Legislature.

The privileges enjoyed by the House of Commons may be divided into two classes—those which are claimed by the Speaker and conceded by the Lord Chancellor on behalf of the Crown and those not claimed but enjoyed as of right. At the commencement of every parliamentary session the practice is for the Speaker to claim some privileges as, being—I suppose the words are the “ancient and undoubted rights” of the members of the Legislature, and the Lord Chancellor very readily concedes them as being granted by the Crown. Among these privileges which are so asked are, first of all, privileges classed as formal privileges, which deal with the manner and the matter of the debates in the Parliament, accession to the Sovereign and so forth. They are mere matters of formality. Then there is the privilege which is asked for, and which is of very great importance, namely, “freedom from arrest, detention or molestation”, that is how it is described in the constitutional books. This is asked for by the Speaker, and it is granted by the Lord Chancellor. This privilege is a very ancient one; and in a very illuminating document recently issued to the press by my distinguished and esteemed countryman, Mr. Subash Chandra Bose, in connection with the violation of his own rights as a Member of the Bengal Legislature by the Bengal Government, he traces the history of this privilege from the time of King Ethelbert. I took some pains to verify whether the statements contained in that very informing document were accurate. Sir, I have consulted such eminent authorities as Sir Erskine May and Sir William Anson on Parliamentary Practice and Procedure. I find that Mr. Subash Chandra Bose’s statements were borne out by English precedent, Statute and decisions. This privilege is a very greatly valued one. Now, in India what do we find? We find that Members of the Legislature who are not disqualified, even under the Government of India Act or the legislative rules, from standing for election are prevented from attending the Sessions of the Legislature by executive orders. I know that in England the privilege has been cut down to the extent of depriving a member of the privilege of attending the House if he is convicted of an offence by a judicial tribunal, by a court of law, for treason, felony, seditious libel, or any other indictable offence; but short of that, no power in England can prevent the attendance of a member of the Legislature or prevent him from discharging his functions in the House. Let me refer to some instances to show how we stand in India in the matter of this privilege. Two Members of the Legislative Council of Bengal, Messrs. Anil Baran Roy and S. C. Mitra, were actually under arrest when they were elected Members of the Legislature. Afterwards their seats were declared vacant by the Bengal Government on the ground that their electorate must be afforded an opportunity of returning others who could represent them and attend the Legislature. But the electorate chose to re-elect those very same gentlemen in spite of the orders of the Government declaring their seats vacant. The Government thereupon found that they could not take any action, because, rightly enough, there is no disqualification either under the Government of India Act or the Electoral Rules, prohibiting persons

who are spirited away by executive orders from standing for, or contesting at, elections. Government had to submit to the vote of the electorate. Normally, at the commencement of every Session, the Governor or the Governor General sends a summons to every Member to attend the Session. In this case the summonses were sent, but those Members were not allowed to attend the Session because they were under detention. One of them, Mr. S. C. Mitra was subsequently returned to the Legislative Assembly. From answers to Questions put in the other place, it appears that Mr. Mitra sent a requisition to the Secretary to the Legislative Department of the Government of India, asking him to place his case before His Excellency the Governor General, setting out all the facts connected with his case and pleading that he has a right to attend the Session of the Legislative Assembly to which he was duly summoned under the rules. But, Sir, the rights of Members of the Legislatures in this country are so ill-defined, that the Secretary to the Legislative Department, in his own discretion, thought fit to say that he did not consider the matter to be one of sufficient importance to be placed before His Excellency the Governor General. He merely passed it on to the Government of Burma where Mr. Mitra was interned. The Government of Burma themselves doubted whether they had any jurisdiction in the matter, but nevertheless decided that he should not attend. And there ended the matter. I submit that such a state of things would be certainly unimaginable in any civilised country. Where there is no disqualification for an intended candidate to stand, where there is no prohibition on an electorate to return such a person, and where there is nothing either in the Act or the rules which can prevent such a person from attending or taking part in the normal functions of the Legislature, that he should, only by reason of executive order, be prevented from attending and taking part in the deliberations of the House is a gross abuse of executive power and a very serious infringement of the elementary privileges which every legislator enjoys in England and the Dominions.

It is not necessary for me to trace the history of this privilege, because it was so well traced in the document which is already referred to by me and which is before the public, and I dare say it is also before the Government of India and the Government of Bengal. I would only cite a famous passage from the speech of King Henry VIII which is reproduced in almost all constitutional treaties to show how greatly this privilege was valued in England :

“ We at no time stand so highly in our Estate Royal as in the time of Parliament, where we as head and you as members are conjoined and knit together into one body politic. So as whatsoever offence or injury is offered to the meanest member of the house, is to be judged as done against our person and the whole Court of Parliament: which prerogative of the Court is so great as all acts and processes coming out of any other inferior Court must for the time cease and give place to the highest.”

That is how King Henry VIII described it, and although there were later attempts to infringe this valuable right, matters have been set right, and I think now the members of the British Parliament enjoy immunity from arrest, detention or molestation by executive action. This is not merely a sentimental right. This is a right which is based upon the fundamental principle that the three branches of Government, the executive, the judiciary and the Legislature, ought to have powers of independence, and one branch ought not to be allowed to trample under foot the privileges of another branch. That is



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the principle upon which this privilege is based. The right in England is recognised to the extent of nullifying any detention which is not in consequence of a conviction by a court of law. I will therefore urge that the Government of India should take into serious consideration the question of embodying in the Government of India Act, when it is next revised, a clause providing for this privilege. If they think that India should continue to be governed on uncivilised lines and that Regulations, Ordinances and other executive weapons of oppression ought to continue, they may continue to do so, but they should allow such members as are detained under executive action, to attend the Legislature and take part in its proceedings and then take them back to their detention. They may be released before the commencement of the Session and taken back at the close of the Session to their place of internment. That is the greatest concession which people in India can make to the arbitrary, high-handed powers of the executive in this country. If they are not willing to do even that, then it amounts to setting at naught the elementary Parliamentary privilege which is enjoyed in every other civilised country and reducing Legislatures to executive subordination. With regard to the Dominions, Sir, the position is that in every Act, by which self-government is given, there is a provision saying that they shall enjoy the privileges which the House of Commons enjoys and that in course of time every Legislature can provide for its own privileges. I will only quote, for example, what is contained in the Australian Commonwealth Act and it is practically copied in other Acts :

"The privileges of Parliament are to be such as are appointed by Parliament by Legislature. Until then they are to be those enjoyed by the Imperial House of Commons."

That is the position which other countries occupy with regard to this valuable privilege. Therefore, I once more beg to urge upon the Government our anxiety to insist on providing for freedom from arrest, molestation and detention by executive action.

Then, Sir, there is another privilege, which is the privilege of freedom of speech. I have already dealt with that question. It is provided for in section 67 of the Government of India Act though it is hedged in by a reservation making the freedom subject to the standing orders and the regulations made by the Government of India. I think it is a serious limitation upon the privilege and there ought to be no such restriction on our freedom of speech. I wish to tell my colleagues that when we secure this freedom of speech we are not allowed to abuse it, for this reason. Even in England freedom of speech within the Legislature is not carried to the extent of members being allowed to publish their speeches outside Parliament. A speech made here is protected so long as it is in the proceedings of this Council, but if it is published by the member privately it is not protected. Any statement contained therein, if it is sedition or libel, will become indictable or actionable in a civil court or a criminal court. The well-known case of Lord Abingdon is one of the classical examples. Lord Abingdon having made a speech in the House of Lords, accused an attorney of unprofessional conduct and later on he had the speech published privately in a paper and the courts dealt with him, and I think it was Lord Kenyon who decided that case. He gave His Lordship three

months' imprisonment and £100 fine and the House of Lords said that the punishment by the court was not a breach of the privilege of the House of Lords. There is also the case of Mr. Creevey. In that case wrong reports of his speech appeared in the newspapers. All that he did was to correct the reports by sending to the papers a correct copy of the speech he had made. The speech was published, but in the course of the speech there were some statements which were defamatory of an individual. On an action for libel he was fined £100 and he brought the matter before the House of Commons. He said : ' I merely corrected the report of the speech I made in the house and I am therefore protected ' but the House of Commons said that there was no breach of the House's privileges and he was rightly tried. Therefore I assure you, that while the privilege of freedom of speech in this House may be safeguarded, it is not liable to be abused, because outside this House we are not to enjoy any protection of publishing broadcast a speech so as to injure the reputation or character of any citizen. Therefore, it is a privilege which will be confined to the proceedings of this House and it ought not to be hemmed in by the proviso which now occurs in sub-section (7) of section 67 of the Government of India Act. *Bonâ fide* reports of our proceedings are of course protected.

Then, Sir, there is another privilege which is enjoyed by the House of Commons and other Legislatures, and that is the privilege of taking cognisance of matters arising within the House. That is a privilege which we greatly value. Any misconduct of any member of this House ought not to be punished in courts of law except when it amounts to an offence under the ordinary penal law and the misconduct of the Member in the discharge of his duties ought not to be made an offence to be taken cognisance of by the criminal courts. On this matter the House of Commons and the House of Lords have expressed themselves very often and very clearly. One very interesting case which was decided was that of Bradlaugh. Bradlaugh was prevented by the House of Commons from taking the oath which he was entitled to take under the Parliamentary Oaths Act. Then he wanted to create a disturbance by insisting upon his right to take the oath. Then the House directed that the Sergeant at Arms should take him into custody and send him out. Then he was prevented from taking the oath and also turned out of the House. He brought the matter before the law courts but the law courts said they could take no cognisance of anything which was done within the walls of the House short of criminal offence, and that decision was approved by the Legislature. That is a decision of considerable importance. If there is any disorderly conduct on the part of any Member the matter ought to be dealt with by the House itself and by the Speaker who has ample powers to prevent mischief and it ought not to be made the subject of action in the criminal courts.

Then, Sir, there is the power of inflicting punishment on persons who commit a breach of privilege, whether they are members or outsiders. It is a valuable privilege which the House of Commons and the House of Lords have enjoyed, whether the punishment be reprimand or expulsion or commitment. It has been held that such punishments will not disqualify a man from seeking re-election. In a case where expulsion was resorted to for misconduct and subsequently it was pleaded that expulsion from the House created a

[Mr. V. Ramadas Pantulu.]

disqualification, it was held that the electors could sit in judgment over the House; if the electors were not satisfied that the expulsion was on proper grounds they could reject the decision of the House and re-elect him. Therefore, it is a valuable right controlled only by the electorate.

Then, Sir, there is another privilege which is of great importance. That privilege is the limitation of the powers of courts of law. It is no doubt a controversial matter. Whenever a privilege of this House is broken we contend that the ordinary law courts should not have any power to deal with the matter and that the House should deal with that. Two interesting cases can be cited on this matter, which have settled the law in England. They are firstly *Ashley v. White*. In that case a voter brought a suit against the returning officer for having prevented him from exercising the vote. And then the court went into the whole question and held, the Chief Justice Holt dissenting, that it was a breach of the privilege of the House, and therefore the ordinary law courts could not deal with it or entertain the case. But I think the case went later before the House of Lords on a writ of error and the House of Lords reversed the judgment and upheld the view of the Chief Justice that the courts could deal with the matter. This subject became one of prolonged conflict between the Houses—the House of Commons deciding that there was breach of privilege in the particular case and the House of Lords holding that there was not, but nothing was ultimately done and the matter rested there.

There was one other case which I shall cite and it is also an interesting case—*Stockdale v. Hansard*. In that case the House ordered the publication of a report which contained defamatory matter against an individual. In the proceedings of the House there was defamatory matter in a speech and nevertheless the House of Commons ordered the publication of that. The defamed individual brought a suit to restrain the publication and for other relief; and in that case Lord Denman addressing the jury said there could be no authority in the House to authorise the publication of a libel upon a man outside the proceedings of the house. On the facts, however, the jury found that the libel was justified because it was true and in the public interests and therefore no damages were given; but still the judge's address to the jury was seriously resented by the House of Commons which thereupon passed the following resolutions:

- “(1) That the order of the House of Commons affords a justification for the sale of any papers whatever which they may think fit to circulate.
- (2) That no court of justice has jurisdiction to discuss or decide any question of Parliamentary privilege which arises before it directly or incidentally.
- (3) That the vote of the House of Commons declaring its privilege is binding upon all courts of justice in which the question may arise.”

That stands there to-day. These are all highly prized privileges of great importance, and they have got to be discussed and put into the Statute. The rights of the Legislatures are already very precarious, because the executive here is so powerful as to trample under foot popular rights and liberties, and I am therefore anxious that the whole matter should be discussed both in this Council and outside and pressed on the attention of any authority which is vested with

power to revise the constitution. I have sought to bring this matter before the House in this form so as to draw the attention of Government to the necessity of incorporating in the Government of India Act all the privileges and immunities which the Members of the Central Legislature and the Provincial Legislatures are entitled to have. As I said, I am not now committing myself to any particular privileges. I am only asking for an investigation into the privileges with a view to incorporating them in the Statute. I am not asking for any new privileges or even for all the privileges that the House of Commons enjoys. The recent instances in which the rights of legislators were trampled under foot with regard to their right to attend the local Councils and Assembly when they were detained by executive authority are very serious infringements which must be put an end to. With these words I move the Resolution and ask the Government of India to give sympathetic consideration to this question, even if they are not willing at present to accept my Resolution. If they promise that they will consider this question and urge upon the Royal Commission that the matter should be taken up seriously, I shall be satisfied for the time being.

**THE HONOURABLE MR. S. R. DAS :** Sir, I do not agree with my Honourable friend that the Reforms Inquiry Committee did not go into this question of privileges and immunities and the incorporation of these privileges and immunities in the Government of India Act fully. On the other hand, I think I shall be able to satisfy the House that they went very fully into the matter. They appointed a Sub-Committee consisting of Sir Muhammad Shadi, Sir Tej Bahadur Sapru, who was not then a member of the Government, Mr. Jinnah and our present President. The question referred to the Sub-Committee, I find, was this : What powers, privileges and immunities should be conferred on the Legislatures in India and their members ? That is, the powers, privileges and immunities not only to Members of the House but of the House itself. Now, that Sub-Committee went very fully into the matter, and I would just place before the House what they actually did. They went into the question of all the privileges and immunities and powers possessed by Parliament and by the different Colonial Legislatures, and amongst them they made out a list of the powers and privileges which were enjoyed by Parliament. These are the powers and privileges which they took into their consideration :

- (i) The power to order the attendance at the bar of the House of persons whose conduct has been brought before the House on a matter of privilege.
- (ii) The power to order the arrest and imprisonment of persons guilty of contempt and breach of privilege.
- (iii) The power to arrest for breach of privilege by the warrant of the Speaker.
- (iv) The power to issue such a warrant for arrest, and imprisonment for contempt and breach of privilege, without showing any particular grounds or causes thereof.
- (v) The power to regulate its proceedings by standing rules and orders having the force of law.
- (vi) The power to suspend disorderly members.

[Mr. S. R. Das.]

- (vii) The power to expel members guilty of disgraceful and infamous conduct.
- (viii) The right of free speech in Parliament, without liability to action or impeachment for anything spoken therein; established by the 9th article of the Bill of Rights.
- (ix) The right of each House as a body to freedom of access to the sovereign for the purpose of presenting and defending its views.

Then they went into the question of what constitutes a breach of the privilege of Parliament, and these are the breaches of privilege they considered :

- (i) Wilful disobedience to the standing rules and orders of the House passed in the exercise of its constitutional functions.
- (ii) Wilful disobedience to particular orders of the House, made in the exercise of its constitutional functions.
- (iii) Wilfully obstructing the business of the House.
- (iv) Insults, reflections, indignities and libels on the character, conduct and proceedings of the House and of its members.
- (v) Assaults on members of the House.
- (vi) Interference with the officers of the House in the discharge of their duties.

They took all these into consideration. So far as immunities are concerned, they found that the immunities possessed by the House of Commons and certain Colonial Legislatures were these, which they also took into consideration :

- (i) Immunity of members for anything said by them in the course of Parliamentary debates.
- (ii) Immunity of members from arrest and imprisonment for civil causes whilst attending Parliament, and for forty days after every prorogation, and for forty days from the next appointed meeting.
- (iii) Immunity of members from the obligation to serve on juries.
- (iv) Immunity of witnesses, summoned to attend either House of Parliament, from arrest for civil causes.
- (v) Immunity of Parliamentary witnesses from being questioned or impeached for evidence given before either House.
- (vi) Immunity of officers of either House, in immediate attendance and service of the House, from arrest for civil causes.

Honourable Members will note that they took into consideration practically every privilege and every immunity enjoyed by the House of Commons including those to which special reference has been made by the Honourable Mover. Now, the Report of the Sub-Committee was unanimous and the House will remember that the Sub-Committee consisted amongst others of Sir Tej Bahadur Sapru and Mr. Jinnah who were not members of the Government.

Now, we find that on page 103 of the Report of the Reforms Inquiry Committee in paragraph 124 they state this :

“ It is necessary to point out that the recommendations in paragraph 91 ”  
that is the paragraph which the Honourable Mover referred to in his speech :

“ were the result of an examination of the subject by a Sub-Committee consisting of Sir Muhammad Shafi, Sir Tej Bahadur Sapru, Sir Moncrieff Smith and Mr. Jinnah, and were unanimously accepted by the Committee as a whole.”

Now, the Committee, in paragraph 91 of their report, to which reference has already been made state this—and you will notice  
1 P. M. that it was accepted by the whole Committee unanimously.  
There was no minority report with regard to this portion, nor was there any dissenting minute with regard to this. After going very fully into the whole question this is what they stated : (I will not read the portion which has already been read by the Honourable Mover.)

“ But we are of opinion that at present such action would be premature. At the same time we feel that the Legislatures and the members thereof have not been given by the Government of India Act all the protection that they need. Under the statute there is freedom of speech in all the Legislatures and immunity from the jurisdiction of the Courts in respect of speeches or votes. Under the rules the Presidents have been given considerable powers for the maintenance of order, but there the matter ends.”

They then go on to say :

“ We think that members of the Legislatures in India should be exempt from sitting as jurors or assessors in criminal trials. This can be secured by the ordinary law under which Local Governments already possess power to exempt classes of persons. The position may be made even more secure by an amendment of section 320 of the Code of Criminal Procedure, 1898, so as to include members among the permanent exemptions.”

That has been done since.

“ Similarly, we think that the Code of Civil Procedure, 1908, might well be amended for the purpose of granting to members immunity from arrest and imprisonment for civil causes during the Sessions of the Legislature and for periods of a week immediately preceding and following actual meetings.”

This has been done and the immunity has been extended to 14 days before and after the sittings instead of a week.

“ Derogatory comments on the proceedings and conduct of the Chambers in India will probably be regarded from the point of view of the British Houses of Parliament as the most common form of breach of privilege at the present time. No party, whether Government or non-official, is exempt from strictures of this character. As the Government and the Legislature become more truly responsible, it may be necessary to provide some check on the liberty of the press in this respect. But we are not at present prepared to advocate any step in this direction.”

If I may say so, in my own view, the Committee were entirely right in their statement to this effect. At the present moment, when the Legislatures are forming their traditions and conventions, it is only right that the public should have absolute freedom to comment on their proceedings and point out where we are in defect. Any restrictions of that power at the beginning of our Legislatures, when we are forming our own traditions and conventions, would, in my opinion, be a great mistake. They then go on to say :

“ We are given to understand that there are at present no means of dealing with the corrupt influencing of votes within the Legislature.”

[Mr. S. R. Das.]

That is one of the points referred to by the Honourable Member.

"We are unanimously of opinion that the influencing of votes of members by bribery, intimidation and the like should be legislated against. Here again we do not recommend that the matter should be dealt with as a breach of privilege. We advocate that these offences should be made penal under the ordinary law."

So that, after considering all the matters of privileges and powers and immunities, this was the recommendation made unanimously by the whole Committee. Therefore, I think my Honourable friend was wrong in saying that they did not go fully into the matter. They did go fully into the matter and they made such recommendations as they thought should be made at the present moment. I do not think that sufficient time has elapsed since the report of the Reforms Enquiry Committee to necessitate any change of view from that put forward by them.

I do not propose to deal at any length with the question of the prevention of Mr. Subash Chandra Bose, Mr. Satyendra Chandra Mitra and Mr. Anil Baran Roy from attending the Legislative Councils after their election. I should only like to point out this. I do not think my friend was entirely correct when he stated that they were prevented from attending by executive orders. After all, my friend has admitted that even in England, if a person who is elected is under detention, by reason of conviction, there is no breach of privilege. Here, the executive action by which these gentlemen were detained was after all action taken by the executive under legislative enactments empowering them to do so. Mr. Subash Chandra Bose and Mr. Satyendra Chandra Mitra were detained under powers conferred on the executive by the Bengal Criminal Law Amendment Act, and I submit, with great respect, that it is wrong to say that they were detained under executive orders.

THE HONOURABLE MR. V. RAMADAS PANTULU : Without trial, Sir, in a court of law.

THE HONOURABLE MR. S. R. DAS : May be, but the power was given to the executive by legislative enactment to detain them without trial. No doubt it is a very serious power. I admit that. But from the legal point of view, it is no more than the right of a Magistrate under the Criminal Procedure Code to issue a warrant for arrest. Both powers are derived from legislative enactments. It may be said of course that it is an extraordinary power given to the executive to detain a person without trial. But after all, it is the Legislature, rightly or wrongly, which has given that power. You may say : "Oh well, it was forced from the Legislature." You may say anything you like. But from the legal point of view, that law is an existing law, and under that law, the executive is given the power to detain without trial, and from the legal positions, whether it is a breach of privilege of the House to detain a person and prevent him from attending—from that point of view it makes no difference whether he is arrested under a warrant of a Magistrate under the Criminal Procedure Code or whether he is detained by an executive order which the executive has power to issue under a legal enactment. I am talking of it from the point of view of breach of privilege. I do not want obviously to go any further into that matter. The position, therefore, that we take up is this, that this question of privilege and immunities was gone into very fully by the Reforms

Enquiry Committee and by the Sub-Committee appointed by them, and that the time has not come to go beyond the recommendations of the Reforms Enquiry Committee. I therefore oppose this Resolution. But I am prepared to say this, that Government is quite willing to place the result of the debate in this House before the Statutory Commission, if that will satisfy the Honourable Member.

THE HONOURABLE MR. V. RAMADAS PANTULU : Sir, I am somewhat surprised at the reply given by the Honourable the Law Member. I expected him to throw some light on his attitude towards the question of privileges. The Sub-Committee appointed by the Reforms Enquiry Committee made a catalogue of the privileges, which would not take more than 30 minutes to do. There is a particular Chapter devoted to the privileges in every constitutional treatise, and it will not take normally more than half an hour to merely summarise those privileges. The Committee did nothing more than that.

THE HONOURABLE MR. S. R. DAS : That is not fair.

THE HONOURABLE MR. V. RAMADAS PANTULU : It is absolutely fair. It did nothing more than write a catalogue. What did the Committee do with regard to the privileges ? Their whole discussion is confined to one short page, page 75 of the report.

THE HONOURABLE MR. S. R. DAS : May I explain ? The Honourable Member is referring to the report which really summarises the recommendations of the Committee, but he has not got before him the report of the Sub-Committee which will show that they went fully into every one of these privileges and immunities.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official) : What about yourself, Sir ? We all knew since our college days what you have been saying to-day.

THE HONOURABLE MR. V. RAMADAS PANTULU : Once more I must, with due deference to the conclusions of the Committee, state that they have done nothing more than write a catalogue of the privileges. We expected to find in this report some reasons why the other privileges were not conceded. We wanted some indication of that. All that it says is :

“ At the same time we feel that the Legislatures and the members thereof have not been given by the Government of India Act all the protection that they need.”

There is one more sentence ; it is this :

“ Eventually no doubt provision will be made in the constitution of British India. But we are of opinion that at present such action would be premature.”

After stating these two things, what they do is they exempt members from attendance on juries and give them immunity from arrest in civil cases. With the exception of these two trivial matters they did nothing at all. Therefore, to say that the Sub-Committee has gone fully into the matter is not correct and does not meet my demand.

Then, with regard to my Honourable friend's ingenious defence of the action of the Government of India, namely, that what the Government of India did was under an enactment of the Legislature. Who does not know it ? We know that the executive has armed itself with all sorts of extraordinary powers



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under so-called legal enactments. If, what the Honourable the Law Member says, is to be taken as the correct constitutional position, may I ask why a person who is detained by the executive under these extraordinary provisions, is nevertheless entitled to stand for election and contest a seat and why the electorates have got the privilege of re-electing him even after the Government have once declared his seat vacant, and why he is summoned to attend the Legislature? Because the Government are helpless under the law to act otherwise.

THE HONOURABLE MR. S. R. DAS: May I interrupt the Honourable gentleman? The same thing might happen, if these two gentlemen instead of being detained under the Criminal Law Amendment Act, had been detained in jail under a conviction by a criminal court. There was nothing to prevent those persons convicted and arrested and detained after conviction from being elected. Exactly the same position.

THE HONOURABLE MR. V. RAMADAS PANTULU: Under the electoral rules a person who is convicted by a court of law is prevented from standing for election to a seat. He is disqualified. The rules are very clear. The position is not as the Law Member says.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): That depends upon the nature of the offence.

THE HONOURABLE MR. V. RAMADAS PANTULU: My point however is this. Except in those cases in which a man is under a legal disability owing to a conviction by a court of law, my contention is that the Executive ought not to have the power to prevent a member from functioning as a member of the Legislature. The rule in England is based upon the well-known constitutional principle that "service in Parliament is paramount to every other call". That is the constitutional position accepted in all other countries except India. I venture to assert once more that it is a travesty of Parliamentary privilege and an outrage upon the elementary liberties of the subject to say that the executive can prevent a member functioning as a part of the Legislature, even though he is qualified under the law to allow and take part in the work of the Council and he has been summoned to attend a Session. That extraordinary power ought to be wiped out and removed as soon as possible. Otherwise, the Legislature will be reduced to a mere farce. I do not think the Honourable the Law Member has said anything to convince me that the Government of India is doing the right thing. What they are doing is absolutely wrong and unprecedented. I hope that agitation would be set up by Members of this House, as well as members of the other place, to see that their rights and privileges are made secure under a Statute and not left to the tender mercies of the executive. As, however, the Honourable the Law Member has said that the debate will be circulated to the Royal Commission, and as I have not formulated the precise privileges that ought to go into the Statute, I do not wish to press the motion to a division. I only wanted to draw the attention of the Government to the iniquitous way in which our privileges are being violated and the liberties of the Members of Legislatures in India are being trampled under foot. I maintain that the privileges enjoyed by the Legislatures in Great Britain and the Dominions should be vouchsafed to India. I think my

present purpose is satisfied by drawing the attention of the Government to these matters and I beg leave of the House to withdraw the Resolution.

The Resolution was, by leave of the Council, withdrawn.

THE HONOURABLE THE PRESIDENT : I presume the Honourable Member (Mr. Kumar Sankar Ray Chaudhury) intends to move his Resolution.

(The Honourable Mr. Kumar Sankar Ray Chaudhury nodded assent.)

The Council then adjourned for Lunch till Twenty-five Minutes to Three of the Clock,

The Council re-assembled after Lunch at Thirty-five minutes to Three of the Clock, the Honourable the President in the Chair.

### RESOLUTION *RE* RECONSTITUTION OF THE LOCAL ADVISORY COMMITTEES FOR RAILWAYS.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU (Madras : Non-Muhammadan) : Mr. President, I beg to move :

“ That this Council recommends to the Governor General in Council to take necessary steps to reconstitute the Local Advisory Committees for Railways in India with a view to give them larger powers and responsibilities and make them more thoroughly representative of the people.”

Sir, the Local Advisory Committees on Railways were constituted in 1923 in compliance with the recommendations of the Acworth Committee contained in paragraphs 139 to 142 of their Report. The object of these Committees is to bring public opinion into close touch with the administration of the various Railways. In paragraph 139, the Committee observe :

“ No scheme of reform can attain this purpose of fitting the Railways to the views of the Indian public, unless that public has an adequate voice in the matter.”

Again, in paragraph 142, they say :

“ The Indian public is deeply and justifiably incensed by the conditions to which both passengers and traders have long been subjected and it is desirable that their representatives should at the earliest possible moment be acquainted with the steps that are being taken for the redress of grievances.”

Sir, let us now find out how far the Government of India and the Railway Administrations have satisfied the wishes of the Acworth Committee and quenched the wrath of the public. So far as I can gather, the Advisory Committees formed on all the Railways are more or less official-ridden or are aristocratic bodies, the democratic element being sparsely represented or not at all. Taking the Madras and Southern Mahratta Railway Company, 7 members are nominated members and 4 elected, of whom only one member represents the Indian Passengers Association. The rural interests are represented indirectly by the members of the Legislative Councils and that too very inadequately. The vast hordes of the Indian Mercantile community are represented by only one member from the South Indian Chamber of Commerce. The Advisory Committees, to function effectively and to thoroughly represent public opinion, should be democratized and the official and aristocratic element weeded out and brought down to the lowest possible minimum.

[Dr. U. Rama Rau.]

A thorough overhauling of the constitution of these Committees is therefore essential. The rural interests must be represented on the Committee not indirectly through Legislative Councils but by allowing the District Boards, Provincial Co-operative Societies and Agricultural Associations to elect one member each to the Committee. This will give a real voice to the rural population. The travelling public have at present only one representative on the Committee. It will be a decided improvement if, in addition to one permanent member, Passengers' Associations at different centres are allowed to elect a member to be co-opted with the Committee when meetings of the Committee are held in different parts of the Presidency. The needs of the districts or sections will then receive better attention.

The same system should be adopted for the representation of the Indian mercantile interests in the Presidency. One member elected by the South Indian Chamber of Commerce cannot effectively represent their interests for want of local knowledge. The members of the Standing Finance Committee for Railways in the Legislative Assembly should be ex-officio members of the local Advisory Committees in the areas which they represent. This will serve to secure more intimate touch between the Central Legislature and the Railways. This proposal was made some time ago by one of the members of the Standing Finance Committee, but was discarded by the Railway Board and the Government of India for no valid reason. I would go even further and suggest that one Member from the Legislative Assembly and another from the Council of State elected from among the elected members of both these bodies, resident within the area served by each Railway, may be put on the Committee for that particular Railway, so that all matters which are of a local nature may be dealt with by them, directly in the local Committees instead of bringing them to the notice of the Central Legislatures, thereby swelling the volume of work here. These are the lines on which I would like the Advisory Committees to be remodelled.

The other part of my Resolution deals with the enlargement of power and the vesting of real power in the Local Advisory Committees. As matters stand at present, the members of the Local Advisory Committees are more often advised by the Railway Administrations than tender advice to them. According to the present system the members have no voice, no power to control, nor are they given any chance to visit the line or inspect the works. The Agent does a certain thing and informs the Committee of his having done so. Some Agents do not allow the members of the Committee to propose subjects for the Agenda. Other Agents let the Committee discuss only questions brought by the members and do not consult them on matters concerning the passengers' and merchants' facilities beforehand and before submitting their proposals finally for approval by the Railway Board. It is necessary that the Agents should consult their Advisory Committees on all matters coming within their purview before taking action. They should include in the Agenda all subjects proposed by members, provided they are within the powers of the Committee, which they seldom do. The work done by the Committee is neither open to the Press nor to the public. The only reports which the public can have is a summary of the work done in the Committee which is officially sent by the Railway Company to the Press. These reports are so short and so meagre that the

public are unable to understand and appreciate them. Meetings of the Committees should be held as often as possible and in different centres through which the Railway runs. This will afford ample facilities for a fuller discussion of the subjects and for learning local conditions at first hand. It will be remembered that while the State-owned Railways, such as the East Indian Railway and the Great Indian Peninsula Railway held meetings varying from 10 to 20 in a year, the South Indian Railway and the Madras and Southern Mahratta Railway held only 3 to 7 meetings. The members should have a right to interpellate and get replies, and they must also have a right to vote on all proposals proposed by the Committee and the majority recommendation should be binding on Railway Companies. These then are some of the defects in the existing constitution and, unless the Government of India invest these Committees with real power, they are nothing but a farce and serve no useful purpose. I know the explanation is contained in that one word "Advisory", but if the Railway Companies are not bound to take the considered views and advice of the majority of the Committee, what is the good of tendering such advice at all? So much of the time and energy of the Committee members could be saved and the Railway Companies could be spared also the bother of this meaningless formality of having to call for a meeting of the Committee only to spurn its proposals. I am convinced, as I hope you will also be, that the time has arrived that these Local Advisory Committees should be thoroughly reconstituted, if they have to serve any useful purpose at all, and with this end in view, I have tabled this Resolution.

I am quite sure, Sir, that some Members of this Council may be members of some Local Advisory Committee. Their experience of the working of the Local Advisory Committee will be of immense use to us. If I am not mistaken, my Honourable friend to my right, Mr. G. A. Natesan, is a member of the Advisory Committee in Madras, and I appeal to him through you to give us the benefit of his experience and to say whether he does not agree with my observations. I commend this Resolution for your kind acceptance.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): My Honourable friend Dr. Rama Rau has made an appeal to me to give my experience. I have the honour to represent the Southern India Chamber of Commerce on the Local Advisory Committee in Madras for the last three years. I may say at once in response to his appeal that my experiences have on the whole been pleasant. I welcome Dr. Rama Rau's Resolution however for more than one reason. My first reason is this. I have been very much astonished to see the number of interpellations that have been put in the Central Legislature by Members here and elsewhere, which are really matters to be submitted to the Local Advisory Committee. I may say to my colleagues here, and those particularly who put a number of interpellations regarding railway matters, that these are purely provincial and most of these subjects, I say so advisedly, could be brought to the notice of the respective Advisory Committees in the provinces. As my friend Dr. Rama Rau has referred to the constitution of these Boards, and as I possess some experience and knowledge of the working of one Railway Advisory Board, that is of the Madras and Southern Mahratta Railway, I may say at once that the Committee has full power to deal with a number of important subjects which are really of use

[Mr. G. A. Natesan.]

to the public. The rules for instance state that the Committee shall be authorised to discuss and record its opinion on the following subjects :

- (1) alterations in the time table of passenger services ;
- (2) alterations in rates and fares and changes of goods classification ;
- (3) proposals in regard to new projects and extensions, proposals in regard to new rolling stock ; and
- (4) any matters affecting the general public interest or convenience.

It is possible to improve upon the scope of the Committee, but I do think that a number of questions with which the Central Legislature is often asked to deal could be brought before these Boards. I rather feel that the existence of these Advisory Boards and their power for doing good are not properly well known and I advised the Madras Railway Advisory Committee the other day that, as far as possible, they should give wide publicity to their proceedings so that the public might know at once what is going on instead of getting scanty news in the newspapers or getting answers in the Central Legislature long after the event. If this were done it would be more useful from the point of view of achieving something substantial in the matter of remedying grievances. My Honourable friend said that the Committee is purely advisory and that we have no voice. It is advisory, I admit, but I cannot subscribe to the statement that it has no voice. I have myself brought forward many questions at these meetings, and I have found that most of our complaints have been attended to. At the same time I wish to make an observation and I hope that the Honourable Member opposite, when he replies on behalf of the Government, will make a note of this. It occasionally happens that you get an Agent who thinks that these Committees are a bit of a nuisance and that it is not part of his work. I would not say that every one does it, but I do know that at least one, at one time Agent, viewed it in that light. But that is a sort of past history ; the Agents now take these questions very seriously and attend to them very properly. With regard to the Madras Advisory Committee, it contains about 11 members. Two representatives are returned by the Madras Legislative Council. One member is elected by the Corporation of Madras, one by the Chamber of Commerce, another by the South Indian Chamber of Commerce, one member by the Indian Passengers' Association. I may also add that where others are nominated they are nominated for a specific purpose and those interests ought not to be neglected. If I am not mistaken the Director of Industries is a member of that Committee ; an officer represents the Port Trust ; so I cannot say that there is anything inherently wrong in the constitution, though I am quite willing to grant that in many ways the constitution can be improved. But more than anything else Members might take a little more interest, and it seems to me that I cannot agree to the proposition that these Committees ought to be immediately reconstituted. I think, however, my friend, Dr. Rama Rau, has a real grievance. I think in the South Indian Railway and in the Bengal Nagpur Railway—I speak subject to correction—they do not have an elected Committee. It should not at all be difficult for these Railways to agree to work harmoniously and in a spirit of friendship with an elected body.

Surely the experience of other Railway Advisory Boards, where they have elected representatives, ought to be brought home to these two Railways, and I do hope the Honourable Member in charge will make a note of this point and request such railways as have not got an elected Committee to see that early steps are taken to introduce in their Advisory Boards as much of an elected element as possible.

3 P.M.

I turn now to the first observation that I made that is to avoid the Central Legislature being troubled with a number of interpellations—sometimes on purely trivial subjects and on other occasions on matters of importance relating only to the provinces. I think it will be a good thing if the Members representing each province in the Central Legislature are asked to return a member to the respective Advisory Boards. It will serve another very useful purpose; they will be in touch with provincial railway administrations. Sometimes a Member talks about railway matters with which perhaps he has not had direct touch. His knowledge will be improved in every way and his case could be better put if he had an opportunity of discussing first hand with the members of the Advisory Board of his own province; and whatever might or might not happen, I do hope that the authorities in charge of these Advisory Boards will see that representative members of the Council of State and the Legislative Assembly in each province are for the time being co-opted, if necessary, by the respective Advisory Boards. It will save the central administration a lot of trouble and really much good will be done by these people being brought into touch with the railway administration in their own province. More than anything else, a considerable amount of time which is at present spent in the Central Legislature will be saved.

My Honourable friend referred to the fact that in some Railway Advisory Boards inspections are not arranged for. I cannot bear him out in that. I recollect myself and my colleagues being asked to go over to Arkonam and see the new railway station, and arrangements for an Indian dining room and things like that. But I do think that more opportunities could be given for inspection to the members of these Advisory Boards.

As regards the reports of the proceedings of these Advisory Committees, it is no doubt true that official summaries are sent to the newspapers, but there is nothing to prevent people from giving wider publicity to these things. As a matter of fact, the South Indian Railway, against which I have many grievances, has adopted one very good thing: they have established lately a Publicity Department which is very active and which is constantly in the lime light. I suggested only at the last meeting of the Madras Railway Committee that a step in this direction might be taken by them also, and I believe the suggestion has been welcomed and they have taken the matter in hand.

My Honourable friend, Dr. Rama Rau, will forgive me if I do not take the same gloomy view of these Advisory Committees. They have been working for only three years and I believe I have been representing the South Indian Chamber of Commerce ever since the privilege of sending a representative to the Madras Railway Committee was accorded. There are many matters in which improvement could be made, and I would suggest that some of the points that my Honourable friend has made and some of the points that I myself have

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urged could very usefully be circulated to all these Agents and they may be asked to see, as far as possible, that effect is given to them.

One word more before I sit down. There is a feeling that even though one or two Railways have not yet come under the direct control of the Government of India, yet pressure could be put upon them to see that they are brought into line with other Railways. So far as the two Railways which I mentioned are concerned, where they have not got an elected Advisory Committee, I do think that pressure and something more than a merely gentle pressure could very well be put upon them to make them come into line with others and to make them understand that in adopting that idea they are furthering their own work.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to make a few observations on the Resolution that has been moved by Dr. Rama Rau. I agree with him partially that the constitution of the Railway Advisory Committees requires a little bit of addition and I agree with the addition which he proposes, namely, that the resident members of each province who represent that province on the Imperial Legislature ought to be ex-officio members of the Railway Advisory Committees which exist in the provinces in which they reside. I have the privilege of being a member of the North Western Railway Advisory Committee, and so, like my friend, the Honourable Mr. Natesan, I can give some of my experiences. At present on that Committee whatever the non-official members propose the Agent is always very kind and courteous to allow those questions or motions ; but at the same time we have got no standing orders or rules of procedure to control and guide our deliberations. It is merely dependent upon the sweet will of the Agent to allow, disallow or do anything with the motions brought forward by members. So I will make a suggestion that all-India rules be framed for these Advisory Committees in which could be incorporated the standing orders and rules of procedure.

One other thing that I want to suggest in this connection is, that the proceedings of these Advisory Committees of all Railways should be circulated to all other Advisory Committees. This has not so far been done, and when I made this suggestion in the North Western Railway Advisory Committee, I was told by the Agent that he would try to do so but could not promise it, as he said that the company lines in particular might or might not comply with his wishes. Hence I made this suggestion here on this Resolution, so that the Government in the Railway Board may be kind enough to ask all the Railways to adopt my suggestion. I think it will be keeping the members of all the Committees in touch with what is going on in other places, and perhaps it will be to their benefit as well as to the benefit of the Railways themselves.

As far as the present constitution goes, except that the Central Railway Advisory Council or the Imperial Legislature is not represented on these Committees it is good enough so far as my information goes.

All the interests are represented and on the North Western Railway Advisory Committee there are two nominees of the Punjab Government, 3 nominees of the Punjab Legislative Council, 2 nominees of the two Chambers of Commerce, and 2 nominees of the Desi Beopar Mandal and one nominee each of

the Agent and Lahore Municipality. I think that is quite representative of the Punjab province. The only thing which I consider wanting is that we have got no rules of procedure. Sometimes questions and motions are admitted in a shape other than that in which they are asked. Sometimes only a summary of the proceedings is recorded. What I wish is that the Railway Advisory Councils should be given the same status as provincial Legislative Councils. They are advisory bodies as well, and any question that they ask or any Resolution that they move after all is a sort of recommendation to the Government. I wish that under the rules which may be framed it may be so arranged that the members of the Advisory Committees may have the right to ask questions, to ask for information and statistics, which might affect trade, industry or commerce, and the travelling public and that they may be allowed to move Resolutions. After all, in case Resolutions are carried they will be simply in the shape of recommendations to the Railway Administration concerned.

One more point, Sir, which I want to raise in this connection is that the inclusion of the subjects cited by the Honourable Dr. Rama Rau is not so detailed, and so sometimes we find difficulty in bringing certain other matters which do not fall quite within the purview of these subjects. I think in interpreting what should be the details in these subjects, I hear that on the Bombay, Baroda and Central India Railway, statistics asked for by the members are given. On the North Western Railway they are not given. I do not know what the practice on the South Indian or on the Madras and Southern Mahratta Railway or other Railways is. Otherwise, I may say, as far as I have heard from many of my friends who are serving on these Committees, that the treatment accorded to members of these Advisory Committees by the various Agents is very good and cordial, and that so far all their motions are generally well considered and put before the meeting.

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary): Sir, I am very glad that my Honourable friend has raised this discussion to-day. The Government attach great importance to these Advisory Committees as a means of bringing the Railway Administrations and the public into touch with one another and giving them an opportunity to understand each other's requirements and each other's difficulties. There is the further point to which my Honourable friend Mr. Natesan has referred, and that is, that we do hope that the existence of these Advisory Committees will relieve the Central Legislature from the larger number of Resolutions and questions on local matters, sometimes of interest and sometimes rather trivial, which do not really concern the Central Legislature. In this House, more than once, I have had occasion to suggest that "this is a matter which might well be brought before the Local Advisory Committee," and I am very glad that this view has been corroborated by my Honourable friend, Mr. Natesan. This discussion, therefore, has served a very useful purpose in bringing to light from the direct and personal evidence of members of Advisory Committee what a very useful purpose these Committees can serve and are serving in many parts of India, and the greater publicity that is given to their work the better.

The Honourable Member's Resolution falls into two parts. He first, of all, deals with the powers of the Committees and secondly, with the question of representation. I will deal with the first question first. The origin and



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purpose of these Committees was stated in paragraph 139 of the Acworth Committee's Report to which the Honourable Mover referred, and with your permission, Sir, I will read it, in order that the Council may understand exactly what is our object in view. The Acworth Committee said :

"We think that no scheme of reform can attain its purpose of fitting the railways to the needs of the Indian public unless that public has an adequate voice in the matter. Control in the strict sense of the word, the power, that is, to give orders to the Railway Executive, Indian opinion can only exercise through its constitutional mouthpiece the Legislative Assembly at Delhi. But though control is reserved, it is possible for bodies representing the public to exercise great influence. In no country was the control of railways more autocratic than in Prussia. Yet it would be probably true to say that, in the generation before the war, the railways of Prussia were subject to less hostile criticism from their public than those of any other country. In Prussia there was a carefully planned system of railway councils, a single national council, and a number of local councils. They consisted of representatives of the Departments of State specially concerned with railway matters, associated with a majority of members nominated by the Chambers of Commerce, Chambers of Agriculture, the great municipalities, and similar bodies representing the public. They had no powers. But they had great power. They had as secretary and met at stated intervals with an agenda on which any member could put down any subject he thought fit, and on which the railway officials put down any subject, such as changes and improvement in train services or alterations in rates for and classification of merchandise, which concerned the public interests and convenience. The railway administration, so it has been reported, very rarely acted except in accordance with the views expressed by the councils in all matters within their competence."

This then is the aim that we should have in view, that mutual confidence and co-operation should be so complete that the Railway Administrations should very rarely act except in accordance with the views expressed by the Committees in all matters within their competence. This is the goal that we should keep before us. It will naturally take time and experience to reach it. But I am glad to say that the progress already reported, and the useful public work that the Committees are performing, are very gratifying, and I am very glad to hear these reports confirmed by Honourable Members of this House, who are members of these Committees, and who have spoken to-day.

For the constitutional reasons stated by the Acworth Committee, it is obvious that the functions of these Committees must continue to be purely advisory. Railways are a central subject, and the executive head of the Railways in India is a Member of the Viceroy's Executive Council. He is subject to the control of the Indian Legislature in the manner prescribed by the Government of India Act. But he cannot be simultaneously subject to the control of local committees. It would create an obvious conflict of authority. Constitutionally, therefore, the local committees can only advise, but their advice is taken on a very large number of questions, and as I have said, with time and experience we may hope eventually to reach the position that a Railway Administration will very rarely act except in accordance with the views expressed by the Committee in all matters within their competence.

This leads me to consider the matters now within their competence. The Honourable Mr. Natesan has already read out a list of subjects which they are empowered to discuss, and I need not repeat it. If, however, we take the recent summaries of the proceedings of the Committees, which will be found in the Library and study them, it will be seen at once what a very wide range of

subjects actually come before these Committees. The subjects include, according to the examination that I have made, construction of new lines, provision of refreshment and waiting rooms, vendors, drinking water, platforms, shelters, design of railway carriages, new stations, time tables, extra trains, booking of berths, through carriages, issue of tickets, fares, concessions, mela arrangements, distribution of wagons, and risk notes.

In fact, it would be difficult to name any subject of public importance in connection with railway traffic that has not received their attention.

Moreover, the Government memorandum permits any member of the Committee to suggest for discussion any subject which is within the competence of the Committee, and if the Agent of the Railway, who is the Chairman of the Committee, refuses to admit any subject to the agenda, he is required to explain at the next meeting of the Committee his reasons for excluding it. Thus the very important power of initiating discussion on any subject rests with the members of the Committee, and I am informed that in practice the greater part of the agenda consists of subjects which have been proposed by ordinary members. Further, the Committee is required to meet once a month if there are matters to be discussed. Thus any member of the Committee not only has the right to initiate discussion on any subject, but he can also claim that it shall be brought before the Committee within a month.

Practically speaking, there is only one subject that is excluded from the purview of the Committee, and that is, questions of personnel, discipline and appointments. I feel sure that every one here will agree that the exclusion of this subject is necessary and right. Ordinary administration would become very difficult, if a local Committee were permitted to concern itself with such questions as the punishment of a *khalasi* or the transfer of an assistant station master. And then we should consider not only the difficulties of administration, but also the point of view of the railway staff. I think the staff, and especially the subordinate staff, would object very strongly if the local Committee were given any direct authority over them.

In dealing with the question so far, I wish to make it clear that what I have said with reference to the Government memorandum applies only to State-managed Railways. With regard to Company Railways, I think Honourable Members opposite have recognised that we have no direct authority over them. We can only approach them and persuade them, and, by the example of what is succeeding on the State-managed Railways, get them to follow that good example. I am very glad to say that in almost all cases, as far as I am aware, the Company Railways have adopted substantially the Government memorandum.

So much, then, for the question of powers. I will now deal very briefly with the second part of the Resolution, namely, constitution and representation.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** What about rates of freights and fares ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** I understand that they are discussed. The constitution laid down by the Government memorandum for State-managed Railways is as follows :

The Agent to be ex-officio Chairman. The remaining members to consist of two Local Government members nominated by the Local Government in

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whose jurisdiction the headquarters of the railway in question is situate; three representatives of the Local Council of the Government in whose jurisdiction the headquarters of the railway in question is situate,—these members to be selected to represent rural interests and the travelling public; one member from the local municipality or corporation at the railway headquarters; five members representing industries, commerce and trade. It further adds that the selection of the bodies which are to choose or nominate members has to be made in consultation with the Local Government; but once this selection has been made, it shall be left to the bodies concerned to nominate or elect their representatives. So it is not quite correct to say that there is a majority of nominated members. Well, Sir, it was the recommendation of the Acworth Committee that a Local Advisory Committee should consist of about 12 members, and I think it will be agreed that this is about as large a body as is practicable if real business is to be satisfactorily done. I think the representation now provided, which is also based on the Acworth Committee's recommendations, is fair to all interests and is not unrepresentative of the people. In fact, my Honourable friend, Rai Bahadur Lala Ram Saran Das, has said that he considers it to be fairly representative of all interests in the Punjab. I remember in the course of a debate in the last Delhi Session I expressed my regret that the Honourable Mover of this Resolution was not a member of his Local Advisory Committee, and he replied that he was thankful he was not. I readily admit that this is not the general attitude. We constantly have requests to give additional representation to bodies and interests, which sometimes appear to have a very good claim. I think it is fair to regard this demand for additional representation as evidence of the importance that is now being attached to these Committees and of the great influence that they are already exercising. The time may come when we may have to consider the readjustment of representation on the Committees, and possibly even their enlargement in order to provide for separate representation of all interests that desire it. But, in the meanwhile, our view is that the Committees, as now constituted, are progressing satisfactorily towards the goal that we have in view. They have not been in existence very long, and it would be unwise to disturb their progress by reconstituting them now. A good gardener does not continually dig up a plant to see how it is growing.

So far as this Resolution, therefore, is concerned, I am afraid I must oppose it. I cannot agree that we should undertake a wholesale reconstitution. But I am much obliged to the Honourable Mover and to other Honourable Members who have spoken, for bringing forward certain defects in smaller matters, defects of details that they have found, and I may give an assurance that the Government of India will consider those defects most carefully. And if the Honourable Mover wishes it, we will circulate a copy of this discussion to the Agents. I think that it is possible to make these little improvements without any wholesale reconstitution of the Committees such as the present Resolution suggests.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: In view of the assurance of the Honourable Member, I do not press my Resolution.

The motion was, by leave of the Council, withdrawn.

## MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

**SECRETARY OF THE COUNCIL :** Sir, the following message has been received from the Legislative Assembly :

“ I am directed to inform you that the following motion was carried in the Legislative Assembly at their meeting held on the 14th September, 1927, and to request that necessary steps may be taken to nominate members of the Council of State to serve on the Committee :

“ That the Honourable the President do appoint six members of this House to serve on a Committee to consider the question of residence and accommodation for members of the Indian Legislature, including the use and disposal of the Western Hostel, New Delhi, and the question of constituting a Standing House Committee to deal with all matters connected with the allotment to members of accommodation or quarters available for their residence ; and that the Council of State be asked to nominate members to serve on the Committee ’.”

**THE HONOURABLE MR. A. C. McWATTERS** (Industries and Labour Secretary) : Sir, with reference to the message which has just been read out, I should like to say, for the information of the House, that I propose, with your permission, to move a motion in this House in due course dealing with the same subject so as to ensure representation of this House on any Committee that may be formed.

## STATEMENT OF BUSINESS.

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH** (Leader of the House) : Sir, I have to announce a departure from the arrangements contemplated in the statement which I made on Monday last. Honourable Members will have observed from the List of Business for to-morrow that the two Tariff Bills relating to cotton have not been included therein as previously proposed. The reason for the omission is that it has become necessary for the Council, subject to your approval, to sit on Saturday next, which is the earliest day when we can hope to be in a position to have the Criminal Law Amendment Bill laid on the table. Government are anxious to secure the passage of that Bill into law during the current Session and, if, as we anticipate, the Bill is passed by the Assembly on Friday and laid here on Saturday, it can be proceeded with on Tuesday, the 20th September, which is the date on which the Session is designed to close. In these circumstances, the fairly lengthy list of business proposed for Thursday has been distributed between that day and Saturday, the two Cotton Tariff Bills being reserved for Saturday.

**THE HONOURABLE THE PRESIDENT :** There will, as suggested by the Honourable the Leader of the House, be a meeting of the Council on Saturday. I hope, however, that it will be possible to finish the business by lunch time. The Council will now adjourn till to-morrow at 11 A.M.

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The Council then adjourned till Eleven of the Clock on Thursday, the 15th September, 1927.



## COUNCIL OF STATE.

*Thursday, 15th September 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL: Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table copies of a Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, a Bill further to amend the Cantonments Act, 1924, for certain purposes, and of a Bill to amend the Indian Emigration Act, 1922, for a certain purpose, which Bills were passed by the Legislative Assembly at its meeting held on the 14th September 1927.

### MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

SECRETARY OF THE COUNCIL: Sir, the following message has been received from the Legislative Assembly:

"I am directed to inform you that the Legislative Assembly have, at their meeting held on the 14th September 1927, agreed without any amendments to the following Bills which have been passed by the Council of State:

- A Bill to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.
- A Bill to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India.
- A Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874.
- A Bill further to amend the Presidency-towns Insolvency Act, 1909, for certain purposes."

### HINDU FAMILY TRANSACTIONS BILL.

#### PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Education, Health and Lands Member): Sir, owing to the unavoidable absence of the Honourable the Law Member, I beg to present the Report of the Select Committee on the Bill to provide that partitions and separations of interest among the members of Hindu undivided families and other transactions among persons governed by Hindu law shall, in certain cases, be effected by written and registered instruments.

## INDIAN LIMITATION (AMENDMENT) BILL.

### PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Education, Health and Lands Member): Sir, I beg to present, on behalf of the Honourable the Law Member, the Report of the Select Committee on the Bill further to amend the Indian Limitation Act, 1908.

### RESOLUTION *RE* INSPECTION OF EMIGRANTS AND THE PROTECTION OF EMIGRANT WOMEN AND GIRLS ON BOARD SHIP.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Education, Health and Lands Member): Sir, I beg to move the following Resolution that stands in my name:

“That this Council having considered the draft Convention and Recommendation adopted by the International Labour Conference at its eighth session held at Geneva between the 26th May and 5th June 1926, concerning respectively the simplification of the inspection of emigrants on board ship and the protection of emigrant women and girls on board ship, recommends to the Governor General in Council that he should ratify the draft Convention and accept the Recommendation.”

Sir, as the subject-matter of this Resolution is somewhat technical, I shall attempt, with your permission and that of the House, to explain briefly the relevant features connected with it and the circumstances which have led up to this motion. In 1924, the International Conference on Emigration and Immigration met at Rome. India was represented at this Conference by Sir P. Rajagopalachari, then Member of the Council of the Secretary of State for India. One of the Resolutions unanimously adopted by the Conference advocated simplification of measures of inspection in vogue on emigrant ships. The Resolution related primarily to emigration from Europe to the two Americas in which ships of different nations are engaged—ships on which nationals of different countries frequently travel together as emigrants. The President of the Rome Conference was also Italy's representative on the governing body of the International Labour Office. On his proposal, that body decided to include the simplification of existing systems of inspections on board emigrant vessels in the agenda of the Eighth Session of the International Labour Conference.

A preliminary questionnaire regarding methods of inspection already in force, and proposals which would secure effective co-operation among States for simplifying systems that were complicated, were sent out by the Office to State Members. In replying to this questionnaire, the Government of India explained that emigration from India was at present permitted only to two countries, Malaya and Ceylon, and took place in ordinary passenger ships which did not carry emigrants of any other race. No special system of inspection on board these ships was in force; and no duplication or disputes regarding competence to inspect had arisen. The problem which the Conference was to solve did not exist for India. It was, therefore, suggested that the Conference should adopt a recommendation which might be applicable to all States maintaining systems of inspection. India's representatives at the

Conference, which met at Geneva in May 1926, reiterated this position. But the Conference decided to adopt a Convention regarding the appointment of inspectors on board emigrant ships, and a recommendation regarding the appointment of women inspectors in certain contingencies. As it was explained by the Committee of the Conference which examined this matter that the Convention aimed at simplifying the existing system of inspection, and not at setting up new systems, and the recommendation to appoint women inspectors was unexceptionable in principle, the delegates of India did not oppose the decision of the Conference.

As the conditions to which the Convention is intended to apply do not at present affect emigration from India, the Government of India were at first doubtful whether they should ratify the Convention or accept the Recommendation. They thought that it might be more suitable to ratify the Convention when the conditions contemplated by it actually arose in connection with the flow of population from India to other countries. Article 9 of the Convention gave them the option to postpone ratification of the Convention until circumstances required it. As they had made their attitude clear to the International Labour Office, when replying to the questionnaire, and their delegates to the Conference had explained the position at the Conference, the decision to postpone ratification could have created no misunderstanding. Before, however, coming to a final conclusion, they decided to seek the advice of the Standing Emigration Committee of the two Houses of the Indian Legislature. The consensus of opinion in the Committee was in favour of immediate ratification and, after full consideration of the advice tendered by the Committee, the Government of India have decided to accept it. The present Resolution is the result of that decision. India has an acknowledged reputation among the nations of the world for the honourable promptitude with which she has given her adherence to international arrangements made under the aegis of the League of Nations or the International Labour Office. In supporting the Resolution which I have now moved, the Government of India are animated by the sole desire to ensure that India's proud eminence as an advocate of international co-operation and amity may be enhanced. Honourable Members of this House are no less jealous of India's place in the comity of nations and no less ardent in their support of the policy, of which the Resolution is a fresh but not the first proof. Sir, I beg therefore to commend it to the House in the full confidence that it will be carried with unanimity.

Honourable Members will observe that Article 11 of the Convention requires each Member ratifying it to bring the provisions of Articles 1, 2, 3, 4, 5, 6 and 7 into operation before the 1st January 1928. If the House adopts the Resolution which I have just now moved, it is proposed to undertake the necessary legislation this Session to amend the Indian Emigration Act, No. VII of 1922, so as to enable the Governor General in Council to carry out such or all of the provisions of the Convention as circumstances may require.

**THE HONOURABLE THE PRESIDENT :** The question is :

“That the following Resolution be adopted :

“This Council having considered the draft Convention and Recommendation adopted by the International Labour Conference at its eighth session held at Geneva between the 26th May and 5th June 1926, concerning respectively the simplification of the inspection of emigrants on board ship and the



[The President.]

protection of emigrant women and girls on board ship, recommends to the Governor General in Council that he should ratify the draft Convention and accept the Recommendation'."

The motion was adopted.

## RESOLUTION *RE* CENSORSHIP OF CINEMATOGRAPH FILMS.

THE HONOURABLE MR. H. G. HAIG (Home Secretary); Sir, I beg to move the following Resolution which stands in my name :

" That this Council recommends to the Governor General in Council that he be pleased to appoint a Committee to examine and report on the system of censorship of cinematograph films in India and to consider whether it is desirable that any steps should be taken to encourage the exhibition of films produced within the British Empire generally and the production and exhibition of Indian films in particular."

Sir, I need not apologise for bringing this subject before the Council. This Council has in recent years shown a very special interest in the question of the control of cinematograph films. In 1925, my Honourable friend Sir Ebrahim Jaffer raised the question and suggested to the Government of India that they should consider some change in the system of censorship; and I need hardly remind the House of the interesting debate which we had only last March when my Honourable friend Mr. Ramadas Pantulu moved a Resolution which I had the pleasure of accepting on behalf of the Government, recommending the Government to adopt adequate measures to prohibit the exhibition of films calculated to corrupt the morals of the people. I was on that occasion in the happy position of being in agreement—I think I may say in full agreement—with my Honourable friend opposite. Indeed, I do not think that this is a question, at any rate at this stage, in which much disagreement is probable. I think we all agree that the cinematograph is an influence with great potentialities for good or evil, an influence that requires to be watched very carefully. I think we are probably all agreed that in some respects at the present time that influence is not good, and we want to see whether we can eradicate the evil aspects of the cinematograph and improve the good. For that purpose the obvious method open to Government is to examine the question of the censorship. I explained last March the great difficulties that must beset the censorship of cinematograph films, and the difficulties under which the censoring authorities must always labour. I also tried to impress upon the House the care and attention that the existing authorities are devoting to this difficult problem. But it is clear from the criticisms that have been made and from the considerations advanced by my Honourable friend and others that the time has come when we have got to re-examine fundamentally our system of censorship and come to a conclusion as to whether it is sound or not, and, if it is not, whether it can be improved in any respects. Faced with this problem, Sir, the Government very soon came to the conclusion that they must advance by means of appointing a Committee. The problems of the censorship have been under discussion by correspondence for years and very little progress has been made; and we anticipated that if we continued the same methods the same results were likely to follow. We thought that we had reached the stage at which we must abandon the method of correspondence and proceed by the method of personal discussion and consideration

such as a Committee is able to afford. That, Sir, is our main object in proposing the constitution of a Committee. I should like to indicate briefly to the House, but in a little more detail than I have been able to put in the Resolution, the main problems which we hope that the Committee will consider. In the first place, there is the fundamental question of method, whether the censorship should remain as at present on a provincial basis or should be centralised. As the House is aware, at the present moment we have four Boards at Bombay, Calcutta, Madras and Rangoon, all of which are entitled to give a certificate of all-India validity, though each province can further apply its own check if it so chooses. The Government of India, though they are, I think, held responsible in a general way for the censorship, and I am sure they are held responsible by this Legislature, really are not in a strong position at present to deal with the question.

They get only occasional complaints and when they get complaints, all they can do is to refer them to the particular Board which may have passed that particular film. They really have no direct means of improving their own ideas, if they have any, on the various censoring authorities. I do not suggest that the Government of India have made up their mind on this subject, but it is quite clear that it is high time that we considered whether this system of censorship by a number of independent and unco-ordinated authorities is in the best interests of the country. That will be the first and perhaps the main problem that the Committee will have to consider.

Then, they will also have to consider the constitution of whatever censoring authority they may decide is required, and in particular, how non-official opinion should be brought to bear on this work of censoring. It is recognised under the existing system that non-official opinion must be consulted and great weight must naturally be attached to it. They will have to consider what is the best means of associating such non-official opinion with the decisions.

Then, again they will have to consider what I might call the mechanism of the censoring authority. In England, for instance, I understand that the Committee which conducts the censorship—that certain members of the Committee at any rate—view every single bit of film that is passed. Though I believe that the same system is carried out by some of the censoring authorities in India, yet I think I am right in saying that others consider that that is not practicable, and that it is safe to work through a system of Inspectors, paid Inspectors, who examine all the films and call the attention of the Committee to any portions or any particular films which they regard as doubtful. Then, the members of the Committee come and give their decisions. That is clearly an important matter which the Committee should consider and decide which is the best system.

Then, again, the Committee will have to consider whether the existing standards of censorship are generally satisfactory. I daresay they will find that the standards so far as they are expressed in rules and principles are satisfactory. The difficulty always is in applying in practice those standards. Finally, I hope they will consider the question of the finance of the censorship. To some extent I think the censorship has hitherto been handicapped by the principle—I am not sure whether it is being applied absolutely—but the

[Sir Ebrahim Jaffer.]

the Committee to report after thorough investigation as to the further measures that are necessary to reject objectionable films and to improve the others so as to make it possible for Indians to have a true and clear picture of culture and society. With these words, Sir, I support the Resolution.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, I thought that a Resolution of this nature would be acceptable to non-official Members irrespective of the parties to which they belong ; but I found from the conversations that were going on in the lobby in another place that there was some sort of suspicion attached to the Resolution and to the object of the Government in bringing forward this Resolution.

Sir, I see this Resolution merely gives effect to, merely wants to take prompt action on, the Resolution which was put forward in March last in this Council ; and it has been made abundantly clear and it is generally agreed that, judging from the results of censorship at present exercised, there is very much to be desired in the system of censorship. I believe a systematised and centralised form of censorship with an effective control would be better than the sort of censorship which is being exercised, and I find actually from the films exhibited in very many places, specially in Burma, that those films which are most objectionable always find very large audiences in picture theatres. It is high time that steps were taken to find out ways and means for effective censorship.

Then, as regards the second part of the Resolution, *e.g.*, the encouragement of films produced within the British Empire, it is a very laudable object. I quite endorse the opinion of the Home Secretary that the second part of the Resolution is not for the purpose of the furtherance of trade, but only for the purpose of making the people living in this Continent of India better acquainted with the conditions in other parts of the British Empire because it is necessary that there should be a better understanding of the conditions, the culture and the social and moral environment in various parts of the Empire so that the feeling of the entity of the Empire may be very much increased. I think, Sir, it is not on the trade side of it but on the cultural, social and moral side of it, that the Committee will be asked to concentrate its attention ; and I think if that is done, a good deal of misunderstanding which exists as regards conditions here and as regards our social and moral environment specially in the minds of people who inhabit other parts of the British Empire would be removed and it would lead to a spirit of harmony and co-operation.

I believe, Sir, that is an object which has everything to commend it, and I think that people who regard this attempt with suspicion deserve to be told that suspicion breeds suspicion and nothing will come out of it. As regards the development of the film in India, I find the film industry, though it is fast developing in places like Burma and Bombay, is in a very crude condition and it deserves considerable help and support in the matter of getting their products finished. If that is done, there is a great future for the film industry in India, and I think the Committee which is proposed to be appointed should look into the matter and see what sort of help can be given to the indigenous film industry which is fast developing. With these words, I heartily support this Resolution.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadian): Sir, I am glad to find myself in the same position in which my Honourable friend Mr. Haig found himself last March, namely, of being able to be in agreement with what he has said. I listened, really, with great interest to the scope and functions of the Committee to be appointed with regard to the censorship. The terms of reference, if I may so call them, are wide enough to include almost every aspect of censorship and to give the Committee full and ample scope to make useful recommendations on that head. I have nothing more to add on that part of the Resolution.

Coming to the second part of the Resolution, I am glad that the Honourable the Home Secretary made it very clear to us that the object is to promote social and cultural interchange of thought and its expression by means of the exhibition of these Empire films and that there is no commercial purpose underlying the proposal. I hope it is true. (*An Honourable Member*: "No") I am also suspicious, I admit, but, at any rate, no purpose is served by being suspicious in advance. Let us see what the Committee is going to do. On this occasion, I am inclined to believe in the statement made by the Honourable the Home Secretary for this reason. If the cinematograph is to become a world force, all parts of the British Empire and also countries outside the British Empire ought to be encouraged to produce and exhibit films, so as to make it a real world force. America and certain other countries have now a virtual monopoly of production and exhibition of films. We obviously go without the advantage of having the benefit of films produced by other countries. Therefore, I welcome the idea that other parts of the British Empire and India would be encouraged to produce and exhibit films. Encouragement of British and Indian films, I take it, will not amount to discouragement of films of other countries. We wish to have also the exhibition of cultural and social environments and the physical environments and thought of other countries, like Japan, China, Russia, Germany, etc. I hope nothing will be done to prevent the importation of films from those lands into this country. Therefore, Sir, I cordially agree also with the second part of the scope of the Committee's functions. The League of Nations' scheme is apparently to encourage the production of archaeological and historical films. We now have some British films of archaeological, historical and educational interest produced in our cinematographs. But we find that in most cinematographs American films have the greatest patronage in India. The reason for that is not far to seek. I think Americans, on the whole, have more imagination than other countries have. Production was defined, by a cinematograph critic, recently in the *Madras Mail*, as the "art of making the impossible credible." But we know by experience that British historical films do the opposite, namely, they make the truth incredible. The American historical films have 90 per cent. of production and 10 per cent. of historicity. They have realised the fact that direct film propaganda is not a success. Therefore, they add a story to propaganda; the story is mostly imaginary and that is the cause of their success. Educational propagandists always add a story to propaganda. But we all wish that the story were sacrificed and we had more of production. It is true that when a film produces a scene underlying which there is a huge false assumption, there will sometimes be a protest; that is true. One part of the country may not understand the

[Mr. V. Ramadas Pantulu.]

assumption underlying a film which another part of the country understands. A film which was well appreciated throughout India, depicting the life of Buddha, was greatly resented in Burma, because the assumptions underlying the life of Buddha were better understood in Burma. Some of us know that there was a great outcry against the exhibition of the American war film known as "The Big Parade." There was nothing wrong with the film. It was a very interesting film, but the reason for the outcry was its underlying assumption that America won the Great War. In most films the assumptions are less obvious. When a film is impressively presented, we forget the fact that the cinematograph lies. As a matter of fact it does lie. But the thing that creates interest is the convincing way in which the film is exhibited and when so presented, the assumptions underlying the film insidiously enter into our minds and act in some subtle manner, and we come to believe in the truth of the scene thus presented. That is the secret of the great success of the American cinematograph. I hope British and Indian films will follow the American example, and that they will be able to produce useful and culturally and socially instructive shows.

One more warning, Sir, I wish to convey. This Committee will also have to recognise the religious and the social sentiments of the people, before they allow the free flow of films into this country. Some of my European friends told me that they felt very greatly oppressed by the exceedingly wrong way in which European customs and habits are exhibited to the people of this country. I quite sympathise with them and I realise what it is to have one's religious customs and social habits misrepresented in an objectionable manner in a foreign country. I hope Europeans will reciprocate that sentiment and see that they pay a similar respect to the religious and the social sentiments of the people of this country when they import films to be exhibited here. What makes a profound devotional appeal to a Hindu may appear ludicrous to a Christian. There is that difference in sentiment and thought for which we must make allowances. I hope the Committee will recognise this factor in their investigation into the social and religious value of the films.

I have not much more to say, except to point out that the statement of the Honourable Mr. Haig that the Committee will consist of a majority of non-officials is somewhat disingenuous. In the other House I know an amendment was moved that the Committee ought to consist of a majority of Indian non-officials. But my friend has very carefully omitted the word "Indian." I associate myself with the amendment moved in the Assembly, but I have not myself thought fit to bring a similar amendment in this House because I wanted to give it a chance at least in another place. If that amendment is carried by the Assembly, I have no doubt, that in a matter like this, where the Government is anxious to show courtesy to the Legislature and also to respect Indian sentiment they will be able to respect the views of that House. If that amendment is passed, I hope they will see their way to have a non-official Indian majority on the Committee. With these words, Sir, I accord my support to the Resolution moved by the Honourable Mr. Haig.

THE HONOURABLE MR. H. G. HAIG : Sir, I think I owe it to the House to thank them for the very favourable way in which this Resolution has been

received and the support which the speakers have accorded to the Government proposals. With regard to what my Honourable friend Mr. Chari said about the development of the industry in India, I know personally nothing about the prospects and possibilities, but I do feel that it is important from the point of view of the country, and if anything can be done to develop the industry in India it is very well worth doing. That, of course, will be one of the principal things for the Committee to consider. My Honourable friend Mr. Ramadas Pantulu said that he hoped that nothing would be done to prevent the films of other countries coming into India. I do not think he need be anxious that any possible measures the Committee might suggest, if they do suggest any, will stop American films coming in, and personally I should be very sorry if it did. Though there are bad American films, there are also exceedingly good ones, and America has shown the world the way in the production of cinematographs. I do not think anybody wants to impose an absolute bar on films produced by America.

As to the composition of the Committee, I am afraid I can say nothing definite because nothing definite has been decided. The view of the Government was that if we gave a majority of non-officials, the racial question was not of any great importance in this connection. However, that perhaps will be a matter for further consideration in another place.

THE HONOURABLE THE PRESIDENT : The question is :

"That the following Resolution be adopted :

'This Council recommends to the Governor General in Council that he be pleased to appoint a Committee to examine and report on the system of censorship of cinematograph films in India and to consider whether it is desirable that any steps should be taken to encourage the exhibition of films produced within the British Empire generally and the production and exhibition of Indian films in particular.' "

The motion was adopted.

### BAMBOO PAPER INDUSTRY (PROTECTION) BILL.

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary) :  
Sir, I move that the Bill to amend the law relating to the fostering and development of the bamboo paper industry in British India, as passed by the Legislative Assembly, be taken into consideration.

The primary object of this Bill is to remove certain difficulties that have arisen in the recent interpretation of the Bamboo Paper Industry (Protection) Act, that was passed by this House in September 1925. Altogether the Bill makes three separate amendments. These amendments are enumerated in the Statement of Objects and Reasons. But the difficulties that have arisen are rather technical and complex and require perhaps some further explanation. I will try to be as brief as possible.

The first amendment is this. The Tariff Board, which in 1925 investigated the claim of the Paper industry to protection, recommended that the protective duty should not be imposed on "newsprint." I need not detain the House at this stage by explaining the reasons for this recommendation. It is sufficient to say that the representatives of the paper

[Sir Geoffrey Corbett.]

industry themselves withdrew their claim to a protective duty on newsprint. The Board then considered how newsprint should be defined for tariff purposes. I must here explain that the wood pulp from which paper is made may be of two kinds. First, there is chemical wood pulp which is made by a chemical process ; and, secondly, there is mechanical wood pulp which is made merely by grinding the wood without the use of any chemicals. The more chemical pulp that is used in making the paper, the better and stronger the paper is. The greater the proportion of the mechanical pulp, the weaker and more inferior the paper is. In fact, paper containing a large proportion of mechanical pulp is only used for ephemeral purposes, such as the printing of newspapers.

The Tariff Board then found that the newsprint commonly imported into India contained about 70 per cent of mechanical wood pulp. Following this finding and allowing a small margin for error in the analysis, the Act of 1925 limited the protective duty on printing paper to paper containing less than 65 per cent of mechanical wood pulp. In other words, paper containing 65 per cent or over was to continue to pay only the revenue duty of 15 per cent *ad valorem*. And paper containing less than 65 per cent was to pay the protective duty of one anna per lb. This seems a fairly simple and straightforward division, but I am afraid we reckoned without the lawyers. It was recently held that paper containing no mechanical wood pulp at all could not be said to contain less than 65 per cent within the meaning of the Act. The ordinary man might perhaps be pardoned for thinking that nought, or zero, was less than 65. But we can only accept the decision of those who are competent to interpret the law.

The effect of this interpretation is that paper which is made entirely of chemical pulp—that is, the best quality of printing paper which cannot be described as newsprint, — is not liable to the protective duty, but only to the revenue duty. And it is this quality of imported paper that particularly competes with the paper manufactured in India. In other words, the Act of 1925 to a very large extent fails of its intended purpose. Obviously, the Government were bound to take the earliest opportunity of amending the Act so as to bring under the protective duty paper which contains no mechanical wood pulp at all.

But an early amendment of the Act is not enough. In the first place, for nearly two years duty has been collected in good faith at the protective rate, and it is necessary to validate these collections. Secondly, when we became aware of the legal interpretation of the Act as now worded, we had no option but to administer it according to that interpretation. We could not go behind the actual wording of the Act to its obvious intention. On the other hand, there was a very real danger that paper importers might take advantage of this flaw in the Act, and in the interval which must elapse before the Act could be amended they might import very large quantities of paper containing no mechanical wood pulp at the revenue rate of duty. These imports might seriously affect the paper industry in India, which the Legislature in 1925 had decided to protect. In these circumstances, the Government felt that they were justified in having recourse to the unusual procedure of amending the Act with retrospective effect, so as to give it the meaning which it was clearly intended to

bear with effect from the date on which it was passed. And in their communiqué on the first July, in which they stated the legal interpretation

12 Noon.

of the Act as now worded, they also announced their intention of making the necessary amendment with retrospective effect, in order that importers might be deterred from importing large quantities of this kind of paper during the interval which must elapse before the Act could be amended. Clause 3 of the Bill gives effect to this intention. The Report of the Select Committee of the Assembly to which the Bill was referred, states very clearly the reasons for which they considered this unusual proposal to be justified. These reasons were accepted by the Assembly and I have no doubt they will also be accepted by this Council.

So much for the first amendment. The second amendment is this. I must explain that in addition to wood pulp, printing paper ordinarily contains a certain amount of "loading" or sizing, which is largely China clay. This loading may amount to as much as 20 per cent. of the total weight of the paper. Now, until last January the customs authorities, following what they believed to be the ordinary trade usage, interpreted the words "65 per cent. of mechanical wood pulp", as meaning 65 per cent. of the *total wood pulp or fibre content* of the paper. But here again the lawyers intervened. Last January they told us that, as the Act was worded, this 65 per cent. could only mean 65 per cent. of the *total weight* of the paper, including the loading. I will try to make clear the effect of this interpretation. Let us suppose that the mechanical wood pulp in a certain consignment of paper is 75 per cent. of the fibre content, and the loading is 20 per cent. of the total weight. It would follow that the mechanical wood pulp would then be only 60 per cent. of the total weight. And this consignment, instead of being admitted at the revenue rate of duty, would have to pay the protective rate. It was at once represented by the importers that large quantities of newsprint, which under the previous customs procedure had been liable only to the revenue duty, had under this new interpretation become liable to the higher protective duty. At the same time, trade usage was not absolutely certain, nor had the Tariff Board in their 1925 report definitely stated whether the percentage should be calculated on the fibre content or on the total weight. In this case, therefore, the Government decided to refer the matter again to the Tariff Board for a clear decision on this specific point. The Board has now reported that the percentage should be calculated on fibre content and not on the total weight. The second amendment made by the present Bill gives effect to this recommendation.

The third amendment is a smaller point. By the Act of 1925 the old revenue duty of 15 per cent. *ad valorem* was also changed to a specific duty of one anna a lb. on writing paper, including ruled or printed forms and account and manuscript books and their binding. It is quite clear from the Preamble to the Act that its intention was to *increase* the duty. But some time after the Act had been passed, it was represented by the printing and allied trades in India that the effect of the Act had actually been to *reduce* the duty in the case of many kinds of printed stationery, account books and so on. For instance, a ledger weighing, say, 14 lbs. and valued at Rs. 150, would only pay a duty of 14 annas at one anna a lb. instead of a duty of Rs. 22-8-0 at 15 per cent. *ad valorem*. The printing trade represented very strongly that this protection



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Act actually diminished the assistance which it had previously enjoyed under the old revenue tariff. Incidentally it is causing an unnecessary loss of revenue, amounting to about a lakh of rupees a year.

The third amendment, therefore, is to make the duty on printed stationery and account books one anna a lb., or 15 per cent. *ad valorem*, whichever is higher. The effect of this alternative duty will be, firstly, to retain for the Indian paper industry the necessary protection against the cheaper qualities; secondly, to restore to the Indian printing industry the tariff assistance which it previously enjoyed in respect of the more expensive kinds; and thirdly, to safeguard the State against an unnecessary and quite unintended loss of revenue.

To sum up, the three amendments effected by this Bill are as follows:

Firstly, printing paper containing no mechanical wood pulp at all is made liable to the protective duty of one anna a lb., instead of the revenue duty of 15 per cent. *ad valorem*.

Secondly, for the purpose of defining newsprint, the percentage of mechanical wood pulp is calculated on the fibre content instead of on the total weight.

Thirdly, the duty on printed stationery and account books, which is now one anna a lb. becomes one anna a lb., or 15 per cent. *ad valorem*, whichever is higher.

Sir, I move.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to amend the law relating to the fostering and development of the bamboo paper industry in British India, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clauses 2, 3 and 4 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That this be the Schedule to the Bill."

THE HONOURABLE SIR ARTHUR FROMM (Bombay Chamber of Commerce): Sir, I wish to draw the attention of the Honourable the Commerce Secretary to what appears to be a slight omission in the Schedule to this Bill. I would draw his attention to item 156 under the heading "Writing Paper". I contend, Sir, that added to the "writing paper" should have been some phraseology to provide for the inclusion of envelopes of all sorts. I believe, Sir, this point was raised in another place and that the Honourable the Commerce Member held that writing paper included envelopes. Sir, we have heard with interest the Honourable the Commerce Secretary explaining to the House this morning how lawyers ingeniously and successfully have contended that printing paper which contained no mechanical wood pulp did not come under the category of printing paper which contained less than 65 per cent. of mechanical wood pulp. I cannot help thinking that lawyers might with equal success point out that writing paper does not include envelopes. (Laughter). If I wrote to some establishment in Bombay or in Calcutta to send me a supply of writing paper, I do not think that establishment would send me envelopes with the paper. I had instructions from my Constituency to move an amendment

But unfortunately these instructions arrived rather late and I felt sure, in fact I ascertained, that the amendment would not prove acceptable to Government, because it would entail delay in the passing of this Bill and would necessitate its going back to the Legislative Assembly. I do, however, wish to bring forward this point to the notice of the Honourable the Commerce Secretary and perhaps he will bring in even another amending Bill in the future if he finds it necessary to do so. It would be somewhat similar to the Income-tax Amending Bills. We get any number of amending Bills to that Act, and I suppose there is no objection to a small amending Bill being brought forward on some future date to this Act.

**THE HONOURABLE SIR MANECKJI DADABHOY** (Central Provinces : Nominated Non-Official) : Perhaps they would send executive instructions to the customs authorities to this effect.

**THE HONOURABLE SIR GEOFFREY CORBETT** : Sir, I fully sympathise with the attitude of the Honourable Sir Arthur Froom on this subject ; and I must say that I should await with some apprehension a reference of this item in the Schedule to the lawyers. At present we are bound by a ruling of the Central Board of Revenue, that is Ruling No. 26 of 1925, in which they lay it down that envelopes made of writing paper are assessable to a duty of one anna per lb., under Statutory Tariff No. 156, as writing paper. That is how things stand at present. Of course that ruling might be challenged. And, if lawyers have a chance, I quite agree that it is possible that they might deny that writing paper includes envelopes. As my Honourable friend Sir Arthur Froom has said, this point was raised in another place, and at that time the Honourable the Commerce Member pointed out that he could not accept the amendment for he did not know what the implication would be, but he said that he would examine the question and have the thing made water-tight at the next general amendment of the tariff.

**THE HONOURABLE THE PRESIDENT** : The question is :

“ That this be the Schedule to the Bill.”

The motion was adopted.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE SIR GEOFFREY CORBETT** : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

**THE HONOURABLE THE PRESIDENT** : The question is :

“ That the Bill to amend the law relating to the fostering and development of the bamboo paper industry in British India, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

## ADEN CIVIL AND CRIMINAL JUSTICE (HIGH COURT JURISDICTION AMENDMENT) BILL.

**THE HONOURABLE SIR JOHN THOMPSON** (Political Secretary) : Sir, I move for leave to introduce a Bill further to amend the Aden Civil and Criminal

[Sir John Thompson.]

Justice Act, 1864, in order to make further provision for the jurisdiction thereunder of the High Court of Judicature at Bombay.

The object of this Bill is to extend the powers of the High Court in respect of the proceedings of the local Courts at Aden and, in particular, to confer a right of appeal to the High Court in the more serious criminal cases.

Sir, I move.

The motion was adopted.

THE HONOURABLE SIR JOHN THOMPSON : Sir, I introduce the Bill.

THE HONOURABLE SIR JOHN THOMPSON : I move, Sir, that the Bill further to amend the Aden Civil and Criminal Justice Act, 1864, in order to make further provision for the jurisdiction thereunder of the High Court of Judicature at Bombay, be taken into consideration.

Up till the present year the administration of civil and criminal justice at Aden has been governed by an Act of 1864. That Act did not recognise the right of legal practitioners to practise in the Aden Courts. It gave no right of appeal beyond the highest local Court in criminal cases, and it provided for the administration of justice entirely, or almost entirely, by officers who had had no special training in law. It has long been felt, both by officials and non-officials, that that system was hardly suited to the conditions of Aden, which is not only a pivot of Empire but also an important port and a considerable commercial centre. For various reasons into which I need not enter it was not found possible to take any steps to remedy that state of affairs until last spring. In February of this year a Bill was introduced into the Bombay Council which, after a certain amount of discussion, was referred to a Select Committee. The Select Committee made a number of additions and amendments, and when the Bill was returned to the Council, it was found that some of the clauses in the form in which they had been returned were *ultra vires* of the local Council. The local Council, however, on an assurance being given that the Government of India would be moved to introduce a Bill in the Central Legislature, as soon as possible, in regard to those clauses which were *ultra vires* of the Bombay Council, passed the remaining clauses of the Bill ; and it is in pursuance of that promise then given that this Bill has been introduced in the Council of State. I need waste little time in explaining the provisions of the Bill. Clause 2 extends the power of reference to the High Court, which at present exists only in respect of suits, also to appeals : and clause 3 provides for an appeal to the High Court in criminal cases of a serious nature. Clause 4 is purely consequential.

I move, Sir, that the Bill be taken into consideration.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadian) : Sir, I should like to ask one question. Has this Bill any connection with the transfer of the administration of Aden from the Government of India to the Colonial office ?

THE HONOURABLE SIR JOHN THOMPSON : No, Sir, I do not think it has any connection with that. The civil and internal administration of Aden will remain with the Government of Bombay ; but the Honourable Member is right to this extent, that one of the factors which made it difficult to

introduce legislation before the present year was the uncertainty in regard to the future of Aden.

**THE HONOURABLE THE PRESIDENT :** The question is :

“ That the Bill further to amend the Aden Civil and Criminal Justice Act, 1864, in order to make further provision for the jurisdiction throughout of the High Court of Judicature at Bombay, be taken into consideration.”

The motion was adopted.

Clauses 2, 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE SIR JOHN THOMPSON :** Sir, I move that the Bill be passed.

The motion was adopted.

### INDIAN SECURITIES (AMENDMENT) BILL.

**THE HONOURABLE MR. A. F. L. BRAYNE** (Finance Secretary) : Sir, I beg to move that the Bill to amend the Indian Securities Act, 1920, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

Sir, this Bill is in reality a very simple measure though it deals with a highly technical subject. Clause 2 of the Bill deals with a drafting amendment. Section 10 of the Indian Securities Act provides for the issue of duplicate security certificates when the original has been lost or destroyed ; but no provision is made for cases in which the original has been stolen, and the amendment provides for that. Sub-section (4) is a natural addition to provide that if the original security is subsequently found, the orders passed in regard to duplicates shall be cancelled.

Clause 3 is necessary for the following reasons. Under section 18 of the Securities Act, Government remains liable to pay the principal as well as the interest on a discharged loan up to the date of the demand by the holder, and it is optional with the owner of a promissory note to defer the demand as long as he likes without entitling Government to plead limitation. The difficulty arose in connection with a judgment by a full bench of the Madras High Court in what is known as the Bapuli case. The Judges held that, in the case of promissory notes which are declared to be payable on demand, although the loan to which they relate may have been notified for discharge, Government remains liable to pay the principal and interest up to the date of the demand even if it be 100 years after. I may say that this difficulty arises only in the case of non-terminable loans. In the case of terminable loans—the bulk of our loans—there is no trouble as a definite date is announced on which repayment will become due after which no interest will be paid.

In these cases Government's liability, both for payment of interest and principal, is extinguished by section 120 of the Limitation Act six years after the loan becomes due for payment.

It is with non-terminable loans that the difficulty arises. Perhaps, Sir, I might shew the nature of the amendment by way of a homely example. Suppose, when times are bad, I borrow from Mr. X a lakh of rupees with the option to repay at my convenience. After a year or so I come into funds

[Mr. A. F. L. Brayne.]

unexpectedly and wish to repay the loan. It would be, I think the House will agree, a distinct grievance to me if Mr. X avoided taking my money and continued to charge me interest for a loan which I did not want or, if I still needed accommodation, when I might be able to get the money at a much lower rate of interest.

The original Bill, Sir, provided a limitation also in respect of the principal of the loan, but this has disappeared in the course of the Bill because it was felt that in the case of certain non-terminable loans the holders regard their securities as permanent pieces of property and it might therefore operate unfairly if a time-limit were imposed for payment of the principal. But the case of interest stands on a totally different footing, and it was realised that it was in the interests of Government and the tax-payer that loans bearing high rates of interest should be converted into loans bearing lower rates and that such operations would be defeated if any holder of securities could continue to hold on to them and claim higher rates of interest for longer periods after the loans had been notified for discharge. For these reasons, Sir, I commend the amendment which appears as clause 3 of the Bill for the acceptance of the House.

Sir, I move.

THE HONOURABLE THE PRESIDENT: The question is:

“That the Bill to amend the Indian Securities Act, 1920, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. F. L. BRAYNE: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

### STATEMENT OF BUSINESS.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House): Sir, I have to inform the Council that, as a result of the previous disposal of certain of the Resolutions balloted for Monday next and of the receipt of information that certain other Resolutions will not be moved, only two Resolutions remain for disposal on that day. In these circumstances we propose, with a view to avoid undue congestion of business on Tuesday, to put down certain items of official business for disposal on Monday after the two Resolutions to which I have referred. The business in question will include the consideration and passing of the Bills laid on the table to-day, all of which will, we believe, be uncontentious, and motions arising out of the Reports of the Select Committees which have been laid on the table to-day.

The Council then adjourned till Eleven of the Clock on Saturday, the 17th September, 1927.

## COUNCIL OF STATE.

*Saturday, 17th September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### QUESTIONS AND ANSWERS.

#### STRIKE OF THE ASSISTANT HARBOUR MASTERS IN CALCUTTA.

189. THE HONOURABLE RAI NALININATH SETT BAHADUR: (a) Is it a fact that the Assistant Harbour Masters of the Calcutta port recently struck work?

(b) Is it a fact that they have returned to work out of consideration for the commercial interests of Calcutta?

(c) Is it a fact that there has been no withdrawal of claims by the Assistant Harbour Masters in resuming work?

(d) Is it a fact that they are still willing to submit to arbitration for the settlement of their claims?

(e) Is it a fact that they have resumed work on the understanding that their grievances will receive full investigation and proper consideration at the hands of the authorities?

(f) Will the Government be pleased to inform the Council what are their grievances, and whether Government propose to consider the same?

THE HONOURABLE SIR GEOFFREY CORBETT: Government are aware that the Assistant Harbour Masters at Calcutta struck work and subsequently resumed their duties after a few days. The report of the Government of Bengal on the subject is awaited; and when it is received, information on the other points raised by the Honourable Member will be communicated to him.

#### RECRUITMENT AT THE FOREST RESEARCH INSTITUTE, DEHRA DUN.

190. THE HONOURABLE RAI NALININATH SETT BAHADUR: (a) Has the attention of the Government been drawn to the paragraph under the heading "Communalism in service", which appeared in the *Hindustan Times*, Simla Edition, dated 1st September 1927?

(b) Are the allegations therein, regarding the office order, true?

(c) Was the said office order issued in pursuance of any instruction from the Government?

(d) Is there any other office order, circular or notice embodying similar principles in any other department of Government?

(e) Have the Government announced their policy as being that of making appointments solely on efficiency basis and not on communal distinctions ? If so, how do the Government reconcile their said policy with the office order, referred to above ?

(f) Do Government propose to send instructions to withdraw the said Office Order ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :**

(a) Yes.

(b) The interpretation, placed by the paper, upon the office order is not strictly correct.

(c) The office order does not correctly carry out the instructions of Government on which it is purported to be based.

(d) Not so far as Government in this Department is aware.

(e) The Honourable Member is referred to the reply given by the Honourable Mr. Haig to question No. 159 in this House on the 12th September 1927.

(f) Yes.

#### PROVISION OF PROPER PLATFORMS AT DAINHAT STATION ON THE EAST INDIAN RAILWAY.

191. **THE HONOURABLE RAI NALININATH SETT BAHADUR :** (a) Will the Government be pleased to state the number of passengers to and from Dainhat station on the East Indian Railway during the year 1926-27 ?

(b) Have the Government received complaints that the passengers are put to great inconvenience for want of proper platforms at the said station ?

(c) Do Government propose to remove the said inconvenience at an early date ? If so, when ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** Government have no statistics for the passengers booked to and from individual stations. If the arrangements at Dainhat are not entirely satisfactory, the matter may be well brought to the Agent's notice by his Local Advisory Committee.

#### INTERCEPTION OF THE LETTERS OF PRIVATE INDIVIDUALS.

192. **THE HONOURABLE SERJUT LOKENATH MUKHERJEE :** (a) Will the Government be pleased to state whether it is a fact that the private letters of certain members of the public are tampered with in the post offices by the agents of the police ?

(b) If the answer to (a) is in the affirmative, will the Government be pleased to state whether this tampering is done with the permission of (i) the Bengal Government in Bengal ; or (ii) the Government of India for all cases ?

(c) Will the Government be pleased to state under what law police officers are empowered to tamper with the correspondence of private individuals ?

**THE HONOURABLE MR. H. G. HAIG :** I would refer the Honourable Member to sections 25, 26, and 27-B. of the Post Office Act of 1898, which

authorises the interception or detention in certain circumstances of articles in course of transmission by post. When action is taken under these sections, it is taken, in accordance with the provisions of the Act, by officers of the Post Office. Action under these sections may be taken under the orders of the Governor General in Council or of a Local Government.

**INTERCEPTION OF PRIVATE TELEGRAMS.'**

**193. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (a) Is it a fact that copies of telegrams despatched by, or addressed to, certain individuals are regularly made over to the police by the telegraph offices ?

(b) Is it a fact that this is done in the case of private as well as press telegrams ?

(c) If the answer to (a) is in the affirmative, will the Government be pleased to state whether this is done with the permission of (i) the Bengal Government in the case of Bengal only ; or (ii) the Government of India for all cases ?

(d) Will the Government be pleased to state under what law copies of telegraphic messages of private individuals are made over to the police without the consent of the former ?

**THE HONOURABLE MR. H. G. HAIG :** I would refer the Honourable Member to section 5 of the Indian Telegraph Act, 1885, which authorises the Governor General in Council or a Local Government to order, in certain circumstances, particular classes of messages shall be disclosed to Government.

**PROVISION OF A WAITING ROOM AND RAISED PLATFORM AT BAIDYANATHDHAM STATION ON THE EAST INDIAN RAILWAY, ETC.**

**194. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (a) Will the Government kindly state the number of passengers to and from Baidyanathdham station on the East Indian Railway during the years 1924-25, 1925-26 and 1926-27 ?

(b) How many extra pilgrim or " Mela " special trains were run to and from the said station during the said three years ?

(c) What are the total values of tickets sold during the said three years from and to the said station ?

(d) Is it a fact that there are no proper waiting room and raised platform at the said station ?

(e) Have the Government received complaints that all passengers in general, and women and children in particular, are put to great inconvenience and bodily risk for want of a properly raised platform ?

(f) Have the Government received complaints that at Jasidi Junction Station on the East Indian Railway where the pilgrims and passengers have to change for Baidyanathdham, they feel great inconvenience for want of properly raised platforms ?

(g) Do Government propose to remove the inconveniences of passengers hereinbefore mentioned at the said two railway stations at an early date ? If so, when ?



**THE HONOURABLE SIR GEOFFREY CORBETT:** Government have no statistics showing the number of passengers booked to and from, or special trains run to, or earnings at, individual stations. They are sending a copy of the Honourable Member's question and the reply to the Agent of the East Indian Railway, who is competent to deal with such matters as raised platforms.

**SCHEME FOR THE IMPROVEMENT OF MADHUPUR STATION ON THE EAST INDIAN RAILWAY.**

**195. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE:** (a) Is it a fact that a scheme of improvement of the Madhupur station on the East Indian Railway has been prepared?

(b) If the answer to (a) is in the affirmative, will the Government be pleased to state when do they propose to take it up?

**THE HONOURABLE SIR GEOFFREY CORBETT:** Enquiry is being made and the Honourable Member will be informed in due course.

**HIGH RETAIL PRICES OF SALT AT CALCUTTA.**

**196. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE:** (a) Will the Government be pleased to state the retail prices of salt at Calcutta before and after the last reduction of the salt duty?

(b) If the price after the reduction has been the same as, or higher than, the price before the reduction, will the Government kindly state the causes of this high price of salt after the reduction of the salt duty?

(c) What action do the Government propose to take in the matter?

**THE HONOURABLE MR. A. F. L. BRAYNE:** (a) Average retail prices in Bengal as reported to Government were as follows, during the months noted below:

February 1924 (before reduction of duty)	..	9-3/8 seers per rupee.
May 1924 (after reduction of duty)	..	11-1/8 seers per rupee.
December 1924 (after reduction of duty)	..	13-1/8 seers per rupee.
July 1927 (after reduction of duty)	..	12-1/8 seers per rupee.

(b) The question does not arise.

(c) Government are watching the progress of market prices.

**PROMOTION OF OFFICERS OF THE PROVINCIAL CIVIL SERVICE TO THE INDIAN CIVIL SERVICE.**

**197. THE HONOURABLE SIR EBRAHIM JAFFER:** (a) Will the Government be pleased to state why no effect has yet been given to the unanimous recommendations of the Lee Commission, with respect to the promotion of some of the officers of the Provincial Civil Service to the Indian Civil Service?

(b) Will they kindly state when this will be done?

**THE HONOURABLE MR. H. G. HAIG:** (a) and (b). The Honourable Member is in error in supposing that no effect has yet been given to these recommendations. I explained the position to him in answer to his question of the 7th March last, and I also stated to what extent increases in the number of posts borne on the cadre of the Indian Civil Service, which are open to the

Provincial Civil Service, had already been made in Bombay. I would also refer the Honourable Member to the reply which I gave to part (a) of the Honourable Mr. Mahmood Suhrawardy's question in this Council on the 30th August last.

**PURCHASE OF PAINTS BY THE EASTERN BENGAL RAILWAY.**

198. THE HONOURABLE SIR PHIROZE SETHNA : (a) What quantity of paints, if any, have been purchased direct by the Eastern Bengal Railway and at what rates ?

(b) At what rates did the Indian Stores Department tender for paints ?

THE HONOURABLE SIR GEOFFREY CORBETT : I am obtaining the information for the Honourable Member, but I would remark that it is incorrect to speak of the Indian Stores Department tendering rates to Railways. The Stores Department is an instrument for obtaining tenders.

**VISIT TO INDIA OF SIR LAMING WORTHINGTON-EVANS, SECRETARY OF STATE FOR WAR.**

199. THE HONOURABLE SIR PHIROZE SETHNA : (a) Is Sir Laming-Worthington-Evans, the Secretary of State for War, coming to India this cold weather ?

(b) When is he due and how long is he expected to stay ?

(c) Will he be accompanied by other officials and, if so, how many ?

(d) Will the cost of his visit and of that of any officials accompanying him or any proportion of such cost be paid by this country and, if so, what is the estimate thereof ?

THE HONOURABLE MR. H. G. HAIG (on behalf of HIS EXCELLENCY THE COMMANDER-IN-CHIEF) : (a) Yes.

(b) He will arrive in India about the 28th October and will stay nearly two months.

(c) Yes, by one officer.

(d) The answer to the first part is in the negative ; the second part does not therefore arise.

**PURCHASE OF SLEEPERS FOR STATE RAILWAYS.**

200. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state what kinds of sleepers have been purchased for each of the Indian State Railways during the year 1926-27 and in the first six months of the current year, and at what price each kind has been purchased ?

THE HONOURABLE SIR GEOFFREY CORBETT : I am sending the Honourable Member a statement giving the information required.

**STOPPAGE OF THE RECRUITMENT OF HINDUS IN THE POSTAL DEPARTMENT,  
PUNJAB AND NORTH-WEST FRONTIER PROVINCE CIRCLE.**

**201. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Will the Government kindly state whether it is a fact that the Postmaster General, Punjab and the North-West Frontier Province Circle, has stopped the recruitment of Hindus in his department? If the answer be in the affirmative, will the Government kindly state reasons for this policy?

**THE HONOURABLE MR. A. C. McWATTERS :** No, Sir.

**APPOINTMENTS OF POSTMASTERS, BRANCH POSTMASTERS, POSTAL INSPECTORS  
AND POST OFFICE CLERKS IN THE PUNJAB AND NORTH-WEST FRONTIER  
PROVINCE CIRCLE.**

**202. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Will the Government kindly state what has been the total number of appointments made in the years 1921-22, 1922-23, 1923-24, 1924-25, 1925-26 and 1926-27, and in 1927-28 to date, of Postmasters, Branch Postmasters, Postal Inspectors and Post Office clerks, in the Punjab and North-West Frontier Province circle, and how many of them were from each of the communities of the Hindus, the Muslims, the Sikhs and the Christians?

**THE HONOURABLE MR. A. C. McWATTERS :** The information relating to 1926-27 and the first six months of the current year has been called for and will be furnished to the Honourable Member in due course. Government have no information in regard to previous years and do not propose to call for it in view of the labour involved.

**STOPPAGE OF THE RECRUITMENT OF HINDUS IN THE FOREST RESEARCH INSTITUTE,  
DEHRA DUN.**

**203. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Will the Government kindly state whether it is a fact that the Director of the Forest Research Institute, Dehra Dun, has totally stopped the recruitment of Hindus in the technical, teaching and ministerial lines of the Institute? If so, whether it has been done with the approval of Government? If not done with their approval, what action do they propose to take in this matter?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** It is not a fact that the recruitment of Hindus has been totally stopped. The Honourable Member is, however, referred to the reply just given by me to question No. 190.

**APPOINTMENTS IN THE VARIOUS ESTABLISHMENTS AT THE FOREST RESEARCH  
INSTITUTE, DEHRA DUN.**

**204. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Will the Government kindly state what has been the total number of appointments made in the technical, teaching and ministerial lines of the Dehra Dun Forest Research Institute during the years 1924-25, 1925-26 and 1926-27?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** A statement giving the information required by the Honourable Member has been laid on the table of the House.

*Statement showing the number of appointments made in the technical, teaching and ministerial establishments at the Forest Research Institute, Dehra Dun, during the years 1924-25, 1925-26 and 1926-27.*

Year.	Teaching staff (Gazetted).	Technical staff (Gazetted).	Technical staff (non-gazetted).	Clerical staff (non-gazetted).
1924-25 .. ..	5	7	24	5
1925-26 .. ..	1	4	7	2
1926-27 .. ..	4	6	14	7

**INTRODUCTION OF THE PRINCIPLE OF COMMUNAL REPRESENTATION IN THE SCIENTIFIC AND TECHNICAL SERVICES.**

205. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state whether it is now the policy of Government to introduce the principle of communal representation, even in the scientific and technical services ?

THE HONOURABLE MR. H. G. HAIG : It was explained in 1925 that the general policy of Government in regard to the appointment of members of minority communities would have to be applied with special caution in the case of services in which high technical qualifications are the most important requirements. In no circumstances will Government appoint to any service a member of a minority community unless they are satisfied that he is properly qualified for the duties of that service.

**RECRUITMENT OF INDIANS TO THE WIRELESS DEPARTMENT.**

206. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will Government kindly state whether the Government has begun to recruit Indians in the Wireless Department ? If so, will they kindly state what has been the total number of appointments made in this Department during the years 1924-25, 1925-26 and 1926-27, and how many of them have been Indians ?

THE HONOURABLE MR. A. C. MOWATERS : The reply to the first part of the question is in the affirmative. As regards the second part, a statement giving the particulars required is laid on the table.

Prior to 1924-25, 14 Indians of unmixed descent were recruited in the Wireless Branch. The numbers subsequently recruited are indicated in the following table :—

	Total number of appointments made.			Total number of Indians of unmixed descent.
1924-25 .. .. .	20			—
1925-26 .. .. .	14			2
1926-27 .. .. .	27			2
Total .. .. .	61			4
Add number previously recruited .. .. .				14
Total recruited .. .. .				18
Deduct number reverted to T. B. .. .. .				4
Total at end of 1926-27 .. .. .				14

The number (14) at the end of 1926-27 includes 11 operators and 3 officials of other grades. In 1927-28 13 Indians have been attached to the Wireless Branch for training.

#### GOVERNMENT TELEPHONE OPERATORS.

207. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Will the Government kindly state whether it is a fact that the Telegraph Inquiry Committee of 1919 did not inquire into the case of Government telephone operators? If so, what were the reasons for their case not being included in this inquiry?

THE HONOURABLE MR. A. C. MCWATTERS: Yes, because the Telegraph Committee, 1920, which is presumably alluded to, enquired into the case of the Telegraph Traffic Branch staff only. The case of the subordinate establishments of the Telegraph Engineering Branch, including the Telephone staff, was dealt with by the Postal Committee, 1920.

#### SALARIES AND SERVICE CONDITIONS OF TELEPHONE OPERATORS.

208. THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Is it a fact that the telephone operator can attain only a maximum salary of Rs. 100 a month; that he enjoys no holidays and is required to put in 8 hours' work every day; that his service is non-pensionable, and that he is liable to be discharged from service on one month's notice? If the answer be in the affirmative, what do the Government propose to do in their case?

THE HONOURABLE MR. A. C. MCWATTERS: There are also senior grade telephone operators whose maximum pay is Rs. 130 a month and all operators are required to perform 50 hours' duty a week, including Sundays and holidays: otherwise the reply on the first point is in the affirmative. Petitions from the telephone operators regarding their pay and service conditions have been and are being received by the Director General who is considering the whole question.

**RULES FOR THE RECRUITMENT OF UPPER SUBORDINATES IN THE TRAFFIC AND MECHANICAL BRANCHES OF STATE RAILWAYS.**

209. **THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** Will Government place on the table the rules framed for the recruitment of upper subordinates in the Traffic and Mechanical Branches of Indian State Railways ? If such rules have not been framed, when do they propose to frame and publish such rules ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** Upper subordinates in the Traffic Department are recruited by promotion from persons already in service in the lower grades. The same procedure is followed in filling upper subordinate posts in the Mechanical Engineering Department, but when persons of requisite qualifications are not available amongst men in service, recruitment is made from outside, either in this country or from the United Kingdom. It is not proposed to publish any rules about the recruitment of this class of subordinates.

**FACILITIES FOR MEDICAL RELIEF FOR THE EMPLOYEES OF THE NORTH WESTERN RAILWAY.**

210. **THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** When and to what extent do Government intend to increase facilities for medical relief on the North Western Railway for its employees ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** The sanction of the Secretary of State has been obtained to the reorganisation of the medical arrangements on the North-Western Railway. The new Chief Medical Officer for the North-Western Railway will take over his duties on the 1st October and formulate detailed proposals for carrying out the reorganisation. It is hoped as a result that new arrangements will shortly be brought into force.

**SAVINGS AND REDUCTION OF STAFF CONSEQUENT ON THE INTRODUCTION OF THE DIVISIONAL SYSTEM ON STATE RAILWAYS.**

211. **THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** What savings in money and what reductions in number of (a) officers, (b) staff, and (c) menials have been made as a result of the introduction of the Divisional System on Indian State Railways ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** The introduction of the Divisional System enabled a reduction of 10 officers costing on an average Rs. 7,539 per mensem to be made on the North-Western Railway. On the East Indian Railway there was a reduction of 19 officers costing on an average Rs. 19,277 per mensem, but a part of this must be ascribed to the amalgamation of the East Indian and Oudh and Rohilkhand Railways which took place at the same time. Government have no figures to show exactly what the savings were in staff and menials.

**CONSTRUCTION OF THE ARICHA-DACCA AND PABNA-SADHUGUNJ EXTENSIONS OF THE EASTERN BENGAL RAILWAY.**

212. **THE HONOURABLE MR. MAHMOOD SUHRAWARDY** (on behalf of **THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY**): (a) Will the Government be pleased to state whether any and, if so, what progress has been made in the construction of the Aricha-Dacca and the Pabna-Sadhugunj extensions of the Eastern Bengal Railway ?

(b) Has sanction been granted for the construction of these extensions and, if so, when will the construction be taken up, and will the lines constructed be broad-gauge or metre-gauge?

THE HONOURABLE SIR GEOFFREY CORBETT: The survey of the Aricha-Dacca Railway has been completed and the Railway Board are expecting the traffic report and project estimates from the Agent very shortly. If they show satisfactory results the project will be taken up either this year or in 1928-29. The Railway Board are awaiting the Agent's recommendations as to the gauge of this line.

The Eastern Bengal Railway Administration are not investigating the Pabna-Sadhuganj extension, but are at present re-investigating a project for a line from Ishurdi to Bera *via* Pabna. The results of the re-investigation are not yet available so that at present it is not possible to give any details about this project.

#### LEAVE RESERVE FOR THE ARMY DEPARTMENT AND ARMY HEADQUARTERS OFFICES.

213. THE HONOURABLE MR. MAHMOOD SUHRAWARDY (on behalf of THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY): (a) Is it a fact that a leave reserve has been sanctioned for almost all Departments of the Government of India Secretariat?

(b) Is it a fact that there is no leave reserve for the Army Department and for the various branches of the Army Headquarters?

(c) Is it a fact that there is a special establishment under the Establishment Officer, Army Department, for dealing with the establishment matters of the Army Department and the Army Headquarters and that almost the whole of this officer's time is devoted to providing candidates for leave vacancies in the Army Headquarters?

(d) Is it a fact that it is with a view to retaining the post of the present Establishment Officer that a leave reserve has not so far been sanctioned for the Army Department and the Army Headquarters?

(e) Is it a fact that every branch of the Army Headquarters is a separate office, complete in itself with its own Cashier and Officer Supervisor in charge of the Establishment affairs?

(f) Is it a fact that all Departments of the Secretariat and its attached offices get candidates for appointments in their offices direct from the Public Service Commission?

(g) Do the Government propose to consider the question of sanctioning a leave reserve for the Army Headquarters and of abolishing the existing appointment of the Establishment Officer?

THE HONOURABLE MR. H. G. HAIG (on behalf of HIS EXCELLENCY THE COMMANDER-IN-CHIEF): (a) Yes.

(b) Yes.

(c) There is a small staff under the Establishment Officer: but a relatively small amount of his time is devoted to filling leave vacancies in the Army Headquarters offices.

(d) The answer is in the negative.

(e) Yes, so far as the internal management of the Branch is concerned.

(f) Yes.

(g) The question of providing a leave reserve is under consideration. The measure will not involve the abolition of the Establishment Officer.

OFFICER IN CHARGE OF THE RECRUITMENT, POSTING AND TRANSFER OF CLERKS, ETC., IN THE ARMY DEPARTMENT AND ARMY HEADQUARTERS.

214. THE HONOURABLE MR. MAHMOOD SUHRAWARDY (on behalf of THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY) : (a) Is it a fact that matters pertaining to the recruitment, posting and transfer of temporary and other clerks, etc., in the Army Department and the Army Headquarters are dealt with by an Assistant in the Army Department, who is himself a temporary man ?

(b) Is it a fact that, in almost all the Departments of the Government of India and the attached offices, the establishment work of those offices is invariably entrusted to Cashiers (who are senior permanent clerks) or to permanent Assistants ?

(c) Do the Government propose to consider the desirability of entrusting the establishment work of the Army Headquarters to some permanent senior man of the Department ?

(d) If not, will the Government state their special reasons for entrusting the work to a temporary man and his special qualifications for the work ?

THE HONOURABLE MR. H. G. HAIG (on behalf of HIS EXCELLENCY THE COMMANDER-IN-CHIEF) : (a) to (d) My Honourable friend appears to be under some misapprehension. The establishment work at Army Headquarters is entrusted to a permanent senior officer, who is called the Establishment Officer and has the status of a Deputy Secretary. This Officer is assisted by a staff of clerks, who submit work to him, but have no administrative responsibility whatever.

EXAMINATION FOR THE RECRUITMENT OF ALL THE HIGHER PUBLIC SERVICES.

215. THE HONOURABLE MR. MAHMOOD SUHRAWARDY (on behalf of THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY) : Do Government contemplate the holding of one examination only under the supervision of the Public Service Commission for the recruitment of all the higher public services in India ? If so, what are the principles upon which successful candidates are to be recruited for the various public services ?

THE HONOURABLE MR. H. G. HAIG : The answer to the first part of the question is in the negative. The second part does not arise.

CENTRAL BOARD OF AGRICULTURE.

216. THE HONOURABLE MR. MAHMOOD SUHRAWARDY (on behalf of THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY) : Will the Government be pleased to state under what power they have established the Central Board of Agriculture for India ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : The Board is a purely advisory body and was established in the year 1904. It exercises no administrative functions but enables agriculturists all over India to exchange ideas.



## PUBLICATION OF KANARESE INSCRIPTIONS.

217. THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Will Government be pleased to state:

- (a) how many inscriptions in Kanarese have been collected and deciphered in the Kanarese-speaking districts of British India since the publication of a number of Kanarese inscriptions by the late Mr. Fleet;
- (b) the total number of Kanarese inscriptions that are yet awaiting publication by the Government of India Epigraphy Department;
- (c) what arrangements have been made to publish the said Kannada inscriptions that are already collected;
- (d) do Government intend to publish all these collected Kanarese inscriptions;
- (e) the approximate number of Kannada inscriptions that are still to be collected in the Kanarese-speaking districts in British India;
- (f) whether the attention of Government has been drawn to a series of articles in the "Kannadiga" on this subject;
- (g) if so, what action has been taken or is contemplated by the Government;
- (h) what steps are contemplated by Government to hasten the work of collecting all the inscriptions in each district of the British Karnatak; and
- (i) whether any memorials have been received by the Government from the President of the Karnatak Historical Society of Dharwar on this subject?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH:

(a) 1,842 inscriptions have been collected, approximately three-fourths of which have been tentatively transcribed.

(b) 1,775.

(c) They are being published in the South India Inscriptions, Text Series, or in the Epigraphia Indica.

(d) Yes, provided they are of sufficient importance.

(e) About 7,000.

(f) No.

(g) Does not arise.

(h) An attached office is maintained in Madras under a gazetted officer with three assistants for the specific purpose of collecting and publishing inscriptions in the Madras Presidency including the Karnatak. The attention of the Honourable Member is also invited to the reply given in the Legislative Assembly to part (c) of Khan Bahadur Sarfaraz Hussain Khan's question No. 245 of the 26th January 1926.

(i) Yes.

**ESTABLISHMENT OF A SEPARATE EPIGRAPHICAL CENTRE IN THE BOMBAY PRESIDENCY.**

218. **THE HONOURABLE RAO SAHIB DR. U. RAMA RAU :** (a) Is it a fact that the Karnatak Historical Association, Dharwar, has petitioned Government for a separate epigraphical centre ?

(b) If so, what action do Government intend to take on the petition ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :**  
(a) Yes.

(b) Having given careful consideration to the petition, Government arrived at the conclusion that a separate epigraphical centre in the Bombay Presidency was not necessary.

**CONSTRUCTION OF NEW RAILWAYS IN THE KARNATAK.**

219. **THE HONOURABLE RAO SAHIB DR. U. RAMA RAU :** Will Government be pleased to state whether :

(a) a memorial, signed by about 5,000 residents of Karnatak, has been received by the Railway Board requesting the Government to expedite the construction of the sanctioned lines and commence new lines in the various districts of the Karnatak ;

(b) any steps have been taken by Government to expedite the construction of the lines mentioned in the memorial ;

(c) any action has been taken by Government to survey the two new lines proposed in the memorial, viz.,—

(1) Hubli-Karwar-Mangalore line ; and (2) Mysore-Mercara-Mangalore line ;

(d) it is a fact that the Bagalkot-Ilkal Branch of the proposed Nipani-Hunagund line has been abandoned ;

(e) any of the proposed six lines will be commenced before the end of this year ; and

(f) the Gadag-Wadi-Raichur line has still a chance of being constructed ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** (a) Government have received a memorial asking for the early construction of 6 lines, investigation into which have, in the past, been made but none of which have been sanctioned for construction. The memorialists also asked that 2 new lines, not yet examined, should be constructed.

(b) 2 out of the 3 lines lying in British territory are now being re-investigated. The other 3 lines pass through Indian States.

(c) A survey is being undertaken for a line from Mangalore to Malpe. The examination of a further extension of this line northwards will depend to some extent upon the results of this survey. The second line passes through an Indian State.

(d) No. The project is being re-investigated by the Madras and Southern Mahratta Railway Administration.

(e) It is not likely that the results of the surveys will be received in time to allow of construction being commenced before the end of this year.

(f) Government have no information on the subject. The line passes through an Indian State.

### FLOOD SITUATION IN ORISSA.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House): With reference to my reply to the Honourable Mr. Mahendra Prasad's question No. 181 on the 12th September 1927 about the flood situation in Orissa, I beg to inform the House that I have now received a telegraphic report from the Local Government. The districts principally affected were Balasore and Cuttack. The flooded area is about 650 square miles. 48 persons lost their lives in Balasore and 2 in Cuttack. The loss of cattle is described as roughly 5 per cent. of the total stock throughout the affected area. 30,000 families have been rendered homeless in Balasore, their houses in about 3 per cent. of the cases having been totally destroyed, while in Cuttack 120 houses have been completely destroyed and 4,000 more have collapsed. Rs. 37,000 have been sanctioned as gratuitous relief to the population affected and *takavi* has been sanctioned to the extent of Rs. 1,80,000 in Balasore and Rs. 60,000 in Cuttack. Further grants will be made later for the rebuilding of houses and the purchase of cattle when the full facts of the situation are known. Besides the monetary relief sanctioned by Government, public subscriptions have realised about Rs. 40,000 in Balasore and Rs. 4,000 in Cuttack. For a fuller account of the situation, the Honourable Member is referred to the speech delivered by the Honourable Mr. Sifton in the Bihar and Orissa Council on the 30th of August 1927, a copy\* of which is laid upon the table of the House.

### MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

SECRETARY OF THE COUNCIL: Sir, the following message has been received from the Legislative Assembly:

"In accordance with Rule 36 (1) of the Indian Legislative Rules, I am directed to inform you that the amendments made by the Council of State in the Bill further to amend the Societies Registration Act, 1860, for a certain purpose were taken into consideration by the Legislative Assembly at a meeting held on the 15th September 1927, and that the Assembly have agreed to the amendments."

### INDIAN TARIFF (COTTON YARN AMENDMENT) BILL.

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary): Sir, I move that the Bill further to amend the Indian Tariff Act, 1894, in order to protect the manufacture of cotton yarn in British India, as passed by the Legislative Assembly, be taken into consideration.

Sir, the report of the Tariff Board on the cotton textile industry covers a very wide field. In fact the summary of conclusions and recommendations in

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\* Not printed in these proceedings.

Chapter XIV of the report contains no less than 127 separate heads. This Bill, however, deals with a single issue arising out of the report, and I will confine myself strictly to this issue. The issue is this. In their terms of reference, the Board were asked to report whether the industry was in need of protection. On page 174 of the report they say :

“ Our conclusion is that to the extent that this (Japanese) competition is facilitated by the inferior conditions of labour in Japan, the industry has established its claim to protection against it.”

I have studied the report fairly carefully, and I may say that this is the only definite answer that I have found to the specific question put to the Board whether the industry is in need of protection.

The object of this Bill, then, is to protect or safeguard the manufacture of cotton yarn against this competition. The “ inferior conditions of labour,” to which the Board referred rise from the provisions of the Japanese factory law which permit the working of women at night, whereas in India this is prohibited by law. I do not think there is any other point of difference which we need take into account. But this working of women at night enables the Japanese spinning mills to work double shifts, and the consequent saving in overhead charges is calculated by the Board to be about 16½ pies per pound of yarn of 32s. count, which is the point at which this competition is most seriously affecting manufacture in India. The present import duty on yarn is 5 per cent. *ad valorem*. This Bill accordingly proposes to make the duty 5 per cent. or 1½ annas per pound, whichever is higher. In other words, whatever may be the value of the yarn, the duty will never fall below 1½ annas a pound ; and the advantage to the Japanese mills from working women at night, as calculated by the Tariff Board, will thus be counterbalanced. But it is expected that the working of women at night will not continue beyond the 30th June 1929, when the amended Japanese factory law should come into full operation. And practically all the yarn produced under present labour conditions should, therefore, be off the market by the end of March 1930. The Bill accordingly provides that this alternative duty of 1½ annas a pound should only have effect up to the 31st March 1930.

Whatever may be said against the Bill, I think it should be admitted that it is the simple, straightforward and logical consequence of the finding of the Board on the question whether the industry is in need of protection. Nevertheless the Bill has been criticised, and these criticisms can, I think, be grouped under three heads. Firstly, the assistance given by the Bill to the mill industry has been said to be so trifling as to be not worth having. Secondly, it is objected that the Bill is arousing much indignation and alarm in Japan, and it is feared that it may provoke retaliatory measures against Indian imports into Japan, such as pig-iron. And, thirdly, it is objected that, in so far as the Bill raises the prices of yarn, it will be injurious to the handloom industry. I will deal with these criticisms in turn.

The first objection is, I think, fairly destroyed by the second. It is not disputed that the Bill is causing anxiety in Japan. But surely this very anxiety represents the true measure of the assistance that we are giving to the Indian industry. If this assistance were really trivial, it is obvious that the Japanese industry would have no need to be worried. But the trouble is that the Indian

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mill industry is always asking for more. Does this Council, for instance, realise that out of the taxation that has been or is being remitted since we balanced our Budget, somewhere about three-quarters, that is, considerably more than 2 crores, is for the benefit of the mill industry? Sir, I was reading the debates on this Bill in another place, and I noticed that the representative of the Bombay Millowners' Association compared the industry to a poor beggar lying by the roadside. If I may be allowed to carry on this simile, might I suggest that it is a common experience that beggars are never satisfied, and that it may be imprudent to attach too much weight to their importunities? I think it would be safer to accept the considered opinion of Sir Victor Sassoon, as given in his note appended to the Select Committee's report, that the duty imposed by this Bill would be of "inestimable value" to the mill industry. I will leave the first objection at that.

The second objection I will deal with very briefly. It would obviously be impossible to safeguard the Indian spinning industry against Japanese competition without some corresponding reaction on the Japanese industry. It is a law of nature that action and reaction are equal and opposite. I do not wish to minimise the anxiety that this Bill is causing to the Japanese mill industry. We can only hope that they will appreciate that the present difference in the labour laws of the two countries is placing the Indian industry at a definite disadvantage; and all that we are doing is to redress the balance for the time that this difference is expected to continue.

Further, we have rejected the recommendation of the President of the Board that an additional discriminatory duty should be imposed only on yarn made in Japan. We have been scrupulously careful that the new duty should apply to all imported yarn without distinction, in whatever country it may have been made. And I venture to suggest that if any country has a grievance, it is surely those countries whose labour laws give them no such advantage, and whose imports into India will now be liable to a higher duty only because women are still permitted to work at night in Japan.

I now come to the third objection. And I will say at once that I have the greatest respect and sympathy for those who honestly fear that this Bill may seriously prejudice the great national industry of hand-weaving. I was myself for a considerable time Director of Industries in the Central Provinces. I spent much time and care on the development and improvement of the handloom industry there, and I take a deep and abiding interest in its welfare. And what I say, speaking from my own experience, is this. The mill industry and the handloom industry are closely interlocked, and the prosperity of the one depends upon the prosperity of the other. On the one hand, the mill produces the yarn, which is the raw material of the handloom weaver. In fact, in relation to the handloom industry, the mill is really the primary producer. On the other hand, the handloom weaver is the mill's best customer. Last year, Sir, according to our calculations, the mills sold about 300 million lbs. of yarn to hand weavers, that is nearly 40 per cent. of their total production. Can it be supposed that the mills would wish to injure their best customer and to diminish his productivity? But what is the position now? If there is one thing more than another that this report brings out, it is that we in India must learn to spin finer.

The figures for last year show that out of 807 million lbs. spun in India, 95 per cent. were below 30 counts. It is essential for the welfare of the industry that we should increase our production in the counts from 31 to 40. But our advance is barred by the fact that the labour conditions in Japan enable the Japanese spinners to undersell us.

And even in the lower counts, in which we have hitherto had a practical monopoly, there is a new danger arising. Honourable Members are aware of the unhappy conditions in China, and will understand how the home market of the mills at Shanghai and elsewhere must be disorganized. In former times China was the great market for the surplus yarn produced by the Bombay mills. At one time we sent there more than 200 million lbs. a year. This has been steadily dwindling, as the spinning mills in China have increased in number, and now in the last few months the tide has definitely turned in the reverse direction. In the first four months of 1926 we exported 7 million lbs. of yarn to China. In the first four months of this year we exported only 170,000 lbs. On the other hand, in the first four months of 1926 we imported only 14,000 lbs. of yarn from China. But in the first four months of this year we imported no less than 3 million lbs. And our information is that increasing quantities of the coarser counts may be expected, made in mills in China under labour conditions which enable this yarn to be sold in India at prices at which the Indian mills cannot compete.

The Select Committee of the Assembly to which the Bill was referred estimated that the handloom weavers using counts between 30s. and 40s. would have to pay an additional 12 lakhs for their yarn, if the Bill became law. I do not in any way underestimate the seriousness of this additional charge. I admit, moreover, that the Bill may affect the price of the cheap coarse yarn which the hand-weavers might otherwise purchase in increasing quantities from China. But the question that I want to put to the Council is this. Would the handloom industry be a real national industry, if it depended on imported foreign yarn which was cheap because it was manufactured by women working at night? In so far as it used this cheap foreign yarn in preference to Indian yarn, would it not really be denationalised? Alternatively, is it reasonable that the Indian mills, which are also a national industry, should be forced to sell yarn to the hand-weavers at a price below the cost of production, in competition with foreign yarn which is manufactured under different labour conditions?

Whether this is fair or unfair, I believe that it would be fatal in the long run to the handloom industry itself. There are those here who are better able to judge than I am, and who can confirm or controvert my forecast. But as I foresee the consequences, if the price of yarn in India is forced down by this foreign competition below the cost of production, the mills will be compelled in self-defence to instal additional looms, and weave for themselves the surplus yarn which they are now selling to the hand-weavers. As I have said, I believe that these two great national industries are interdependent and complementary to one another. But if they are forced into conflict, the loss to the handloom industry will not, I fear, be a matter of a few lakhs.

However that may be, I think that I have said enough to show the importance of yarn in the textile industry. I feel, Sir, that there has been a tendency

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to underestimate the value of this Bill, because it deals only with yarn ; and to belittle its effectiveness, because, perhaps, after so much talk and so much writing, it is simple and short. I think, Sir, that a remedy is none the worse for being simple and short. But the point which I wish to emphasise is, that spinning is the foundation of the whole textile industry. If this is undermined, the superstructure of weaving, whether by power or by hand, will inevitably collapse. Indian cloth should be woven from Indian yarn. And Indian yarn is entitled to be safeguarded against foreign yarn which is produced under industrial conditions that are prohibited by law in India. I ask Honourable Members to believe that I for one would not be moving this Bill in the full conviction that it is necessary and just and right, if I thought that it was in any way unfair or really injurious to the handloom industry.

Sir, I move.

THE HONOURABLE THE PRESIDENT : The question is :

"That the Bill further to amend the Indian Tariff Act, 1894, in order to protect the manufacture of cotton yarn in British India, as passed by the Legislative Assembly, be taken into consideration."

I observe that there is an amendment standing on the paper in the name of the Honourable Seth Govind Das that the discussion be adjourned *sine die*. I have explained to the Council on more than one occasion the position of the Chair in regard to dilatory motions of this nature. I have pointed out that a motion for the adjournment of a discussion, whether to a definite date or *sine die*, is not one specifically contemplated by the Rules or Standing Orders, and I have argued therefore that it must obviously be within the discretion of the Chair whether it will accept such a motion and put it to the vote of the Council or not. There have been cases in my recollection in which there have been obvious reasons pointed out from both sides of the House why discussion on a particular motion or measure should be adjourned for a definite period or to a definite date, and in those cases I have allowed the motion for adjournment to be moved and put it to the House. There have been other cases in which an obvious desire, almost unanimous desire, has been shown by the House that the discussion on a particular measure should be adjourned with the intention that it should be shelved without the House arriving at any decision in the matter, and in those cases also I have allowed the motion to be moved and put it to the House. It is not within my recollection that a motion of the nature standing in the name of the Honourable Seth Govind Das has been put to the House. To my mind its obvious intention is to shelve the Bill which is now before the House for their consideration. *Primâ facie*, it would appear that the proper course for the Honourable Member would be to oppose the motion which is now before the House, or, if that motion were carried, to oppose the further motion that the Bill should be passed. Therefore, if I call the Honourable Member now it is not with the idea that he should forthwith move the amendment standing in his name ; it is to hear what he has to say on the Bill, and after I have heard his speech on the Bill, a speech which will no doubt contain his reasons for desiring to shelve this discussion, I shall be in a better position to understand whether it is fair to the House that I should put the motion which he desires to move.

THE HONOURABLE SETH GOVIND DAS (Central Provinces : General) : Sir, the Honourable Sir Geoffrey Corbett in moving that the Bill be taken into consideration has said that the Bill is the outcome of the recommendations of the Textile Tariff Board. He very cleverly read a quotation from the report, Sir, in which the Board have pointed out that the industry needed protection. But, Sir, he did not further read the proposals of the Board regarding this protection. The question is whether the Bill is according to the recommendations of the Board and whether the Bill provides such ways of protection as have been recommended by the Board. I say, Sir, that though the Bill is the outcome of the appointment of the Tariff Board, yet, Sir, it is in direct contradiction to their recommendations regarding the protection of the textile industry ; and therefore, Sir, first of all I want to record my emphatic protest against the manner in which the Government have dealt with the report of the Tariff Board. The House knows, Sir, that in fact the Government have turned down practically all the important recommendations of the Tariff Board. As I have more than once pointed out in this very House, it is certainly useless to appoint these Commissions, these Committees, these Boards, and spend lakhs and lakhs of the poor tax-payer's hard earned money, if their recommendations are to be treated in such a shabby manner. When I say so, Sir, let me not be misunderstood. I admit that the final responsibility of giving effect to these recommendations should rest with the Government. Yet, Sir, it is an entirely different thing. It does not mean that the recommendations of these Boards should be treated with utter contempt as the recommendations of Textile Tariff Board have been treated.

Sir, let us now briefly see what the Tariff Board had found and what they recommended. The Board have found, as has just been pointed out by the Honourable Sir Geoffrey Corbett, that there is unfair competition from Japan with our industry. This competition takes place both in the case of cloth and in the case of yarn which my Honourable friend Sir Geoffrey Corbett did not say. The extent of this competition, they found, was  $12\frac{1}{2}$  per cent. in the case of cloth and 10 per cent. in the case of yarn. The Board have also pointed out, as has been suggested by my Honourable friend Sir Geoffrey Corbett, that there are certain advantages to the Japanese industry. Regarding these advantages, Sir, the Board have said that they were due to the State aid and also to their industrial organisation. They have also found our disadvantages, especially the disadvantages of our Bombay industry, which are due to high wages, excessive local taxation and unduly conservative methods. Granting that the present depression of our mill industry is on account of these reasons and also on account of raising the price of the rupee to 18d. which, though pointed out by the Board, was yet cleverly overlooked by my Honourable friend Sir Geoffrey Corbett, the Board definitely came to the conclusion that State aid to our mill industry is immediately called for. The Tariff Board also drew attention to the importance of our mill industry and the tremendous progress this industry has made between the years 1883 and now. They proved, Sir, that in 1883 the Indian output was only 9 per cent. of our total requirements, whereas, in spite of our increase in population to-day, this industry provides 42 per cent. of the cloth needed for our total requirements. And this has taken place, Sir, in spite of the very adverse circumstances, the chief of which is the step-motherly treatment of the State towards this industry. This treatment of the State



[Seth Govind Das.]

can be proved by so many instances. Firstly, they raised the exchange to 16d. in 1893; then they imposed the 3½ per cent. countervailing duty in 1896; and, finally, Sir, they have further raised the price of the rupee recently to 18d. The Board was so much impressed by the seriousness of the situation that on page 184 of their report they said:

"The cotton textile industry is the most important industry in India, and Bombay is still by far the biggest centre of it. The extent to which the prosperity of Bombay City and of the Bombay Presidency are bound up with the fortunes of the industry needs no emphasis from us. In view of the dangers, financial and industrial, which are inherent in the continuance of the present conditions, the case for as effective a measure of State aid as possible does not appear to us to require elaboration."

After this emphatic declaration, Sir, let us see what the Board have recommended. There is the difference between me and my Honourable friend Sir Geoffrey Corbett. The Board have recommended that a duty of 4 per cent. should be imposed on all imported cloth, and out of these proceeds they have recommended a bounty of one anna or its equivalent to be given per lb. of yarn of 32 or higher counts. The reason why this bounty was confined to yarn of 32 counts and higher was that the foreign competition is, in fact, with the yarn of 32 and higher counts. Sir, the Japanese competition was confined to the yarn between 30 and 40 counts. These recommendations of the Tariff Board were made on the 21st January 1927. It will be remembered that this Board was appointed two years after the repeated requests of the mill industry regarding this unfair competition from Japan. The Board took more than 7 months in their inquiry and then Government sat down on the report for more than six months. During all this period the mill industry was going from bad to worse. But they were expecting that as soon as the report of the Board was out and as soon as their recommendations were made, Government would lose no time in giving effect to them. And what do we find? We find that after hatching the report for more than six months, Government have turned down practically all the important recommendations of the Tariff Board and have brought this Bill which, as I have just said, is directly in contravention of the recommendations of the Tariff Board. The House will have noticed that the Tariff Board were against imposing any duty on imported yarn in the interests of the handloom industry, and it was on account of this that they preferred a scheme of bounty in place of the duty on imported yarn. In the Resolution of the 7th June, the Government themselves admit the undesirability of imposing duty on imported yarn because of its adverse effect on the handloom industry. So, Sir, it becomes clear that up to the 7th June both the Government and the Tariff Board were against imposing any duty on imported yarn. At the same time, the Government were also equally against levying duty on imported cloth, though the Board had proposed this for the protection of the indigenous industry. This is what the Board said:

"We are agreed that, in addition to the protection afforded by the present import duty of 5 per cent. on yarn and 11 per cent. on cloth, a moderate measure of protection can be justified for such period as the labour conditions in Japan continue inferior to those in India."

Sir, it was again and again pointed out that there were very few spinning mills in India which were not weaving mills as well, and therefore, unless the weaving portion of the industry was adequately protected, the future of the

industry was in the dark. After the publication of the Resolution of the Government on the 7th June, the mill-owners once more in a deputation waited on His Excellency the Viceroy and pressed this point. But, Sir, the Government turned a deaf ear to their appeals. On the 15th August the Government in place of the duty on cloth decided to impose  $1\frac{1}{2}$  annas per lb. or 5 per cent. on yarn, whichever is greater, as has been pointed out by my Honourable friend Sir Geoffrey Corbett. This, as I have just said, was entirely against the recommendations of the Tariff Board. Therefore, Sir, the question arises—why such a step has been taken? The answer is offered, Sir, in Tables VI and VII given on page 19 of the Tariff Board's Report. The examination of these tables will at once show that the import of yarn into this country from the United Kingdom is decreasing every year, while the imported yarn from Japan is increasing. Now, Sir, what do we find? In the year 1923-24 the total yarn which was imported into this country from the United Kingdom was 52 per cent., and in 1925-26 this has gone down to 31 per cent., while the total percentage of yarn which was imported from Japan into this country in 1922-23 was 45 per cent. and in 1925-26 it has gone up to 65 per cent. This is, Sir, in fact, the secret of this Bill.

On the other hand, what do we find in the matter of cloth? In spite of various fluctuations the imports from the United Kingdom continued to be about 90 per cent. average of the total imports as usual. Therefore, Sir, the duty on cloth will come in the way of the Imperial interests of the United Kingdom and the duty on yarn will not be against them to such an extent. That is the secret of this Bill. These facts speak so clearly that it will be very difficult, and in fact impossible, for Government to escape from the accusation that, while dealing with the protection of the Indian cotton industry, they have in fact dealt with the question of the Lancashire imports.

Then, Sir, it has been pointed out more than once, that by imposing a duty on imported yarn the mill industry is not going to be adequately protected. Regarding this, Sir, I shall only quote two important Members of the other place who are closely connected with the mill industry. Sir Purshotamdas Thakurdas said :

“The protection offered by the Bill becomes more an eye-wash than a reality.”

Sir Victor Sassoon, who represents the millowners of Bombay in the other place, said in his speech :

“I am perfectly prepared to admit that we in the mill industry will not benefit”.

And, Sir, without adequate protection, protection in fact is useless. The principles on which the granting of protection is based are, that it shall revive or bring into existence an important national industry, that the amount of protection shall be so generous that it will induce capitalists to invest their money in the industry and, that, as a result of such internal competition, the prices of articles concerned will be reduced in course of time, and the consumer, who suffered a temporary loss and inconvenience by the imposition of duties, will be compensated for such loss later by the reduced price of the articles concerned. These, Sir, are the true economic principles on which protection is based. These are the principles, Sir, which were accepted both by the Fiscal Commission and the Tariff Board, of which my Honourable friend Sir George Rainy himself was the first President.

[Seth Govind Das.]

Sir, as I have shown, it is clear that the present Bill is not going to protect the textile industry to the extent it is desired. On the other hand, there is no doubt that the handloom industry is bound to suffer by this Bill. As regards the extent of the loss to the handloom industry, it is difficult to put an exact figure. The lowest figure which has been pointed out by even the supporters of the Bill is about 12 lakhs of rupees annually. But, Sir, the actual loss will be much more than this. How much it will be, it is difficult to forecast. Some think it will be about 40 lakhs; others think it will be more than a crore. (*The Honourable Sir Maneckji Dadabhoy*: "Rubbish!"). I am coming to that if the Honourable Member will only keep quiet for a little while. An Honourable Member of the other House said in the other place:

"The handloom weavers who have to depend on Indian mill yarn to the extent of 260 million pounds will have to pay 3 pies per pound more upon those counts which they purchase irrespective of the present existing prices. If they raise it 3 pies per pound over the existing prices, that makes up 40 lakhs of rupees. Where is the force in saying that this additional increase of duty on yarn at 1½ annas will affect only to the extent of 10 per cent. of the consumption, and that it will give only 12 lakhs of rupees and nothing more?"

Another Honourable Member in the same way pointed out in the other place.....

THE HONOURABLE THE PRESIDENT: I think the Council would much prefer to have the Honourable Member's own views. He is doing much quoting from the debates in another place.

THE HONOURABLE SETH GOVIND DAS: Well, Sir, what I meant was that some persons think the actual loss to the handloom would be 40 lakhs while others think it will be more than a crore. The figure on the face of it may look a bit high, but still there is force in the argument that the prices of lower counts of yarn will also increase, and therefore, Sir, the loss to the handloom industry will be much more than 11 or 12 lakhs. The Honourable Sir Geoffrey Corbett just now pointed out that for nationalising the handloom industry it is essential that they should use Indian made yarn. I admit, Sir, that in the course of time they must. As non-co-operators, Sir, we cannot call this industry purely a national industry until and unless it uses Indian yarn. But at the same time for some time yet, in order to keep this industry alive, we shall have to allow foreign yarn to be used just as we allow the mills themselves to use foreign machinery, and yet we call it a national industry.

Sir, I am myself for protecting the mill industry. I am not one of those, Sir, who consider that the mill industry is not a national industry. I consider, on the other hand, that it is to a very great extent a national industry. I admit it is the only organised national industry in India to-day. But at the same time I do not wish that the workers who are employed in these mills—the number of them in Bombay is only 1½ lakhs, or if you take the mills all over India it is 3½ lakhs,—in their interest, the workers who are employed in the handloom industry should suffer. In this country the number of handlooms is between 20 to 25 lakhs; and the number of people employed on them is between 50 and 60 lakhs. I hope no man in his senses would like to see that for the interests of 1½ lakhs or for the interests of 3½ lakhs these 50 or 60 lakhs

of workers, who make their living in the handloom industry, should suffer. Therefore, in order that the Government may once more consider the whole question I wanted to move my amendment which adjourns this debate *sine die*. I hope, Sir, it will not be contended that by raising the question of the duty on imported cloth we are in any way going beyond the scope of the Bill. As my Honourable friend Sir Geoffrey Corbett pointed out, this Bill is the outcome of the recommendations of the Tariff Board. The Tariff Board did not deal with the question of yarn only, but they dealt with the whole question of the textile industry ; and therefore, Sir, I submit that we are justified in considering the whole ground covered by the report of the Textile Board. We did so in the matter of Steel protection ; we did so on the occasion of the Currency legislation ; and we are entitled to do so on the present occasion on the same grounds. Now, Sir, I leave it to you to allow me to move my amendment or not.

THE HONOURABLE THE PRESIDENT : I have listened to the Honourable Member with great care in order to ascertain what really were his reasons for putting his motion for adjournment on the paper. I have not gathered from what he has said that he was influenced by any desire that the House should dispose of this matter without coming to a decision one way or the other. On the contrary, I gathered that he seemed to be anxious that the House should now come to a decision which would be fatal to the Bill. It comes to this, therefore, that, in respect of the reasons given by the Honourable Member why I should allow him to move an adjournment of the discussion, the House's decision on that motion would be exactly the same as its decision on the motion that is really before the House, namely, for the consideration of the Bill. Therefore, I should be putting the House to the trouble of taking two divisions instead of one, where one would serve. In these circumstances, I regret that I see no reason for putting the Honourable Member's amendment before the House. The discussion will therefore continue on the Honourable Sir Geoffrey Corbett's main motion.

THE HONOURABLE RAI BAHADUR NALININATH SETT : (West Bengal : Non-Muhammadan) : Sir, I oppose this motion. The Honourable Sir

George Rainy in presenting his case in support of the Cotton Yarn Amendment Bill felt his way in a nervous  
12 Noon. air of impartiality which betrayed his own want of faith in the correctness and stability of the position that this measure will not affect the handloom weavers. I shall not tire this House with the able and well-authenticated arguments which several Members in the other House advanced to prove conclusively that the handlooms would be hard hit by this measure. What I do complain of, and I do emphasise on this House to consider, is that when an unanswerable case of hardship on 6 millions of people earning about 3 annas per head was urged on the Members of the other House, the modest proposal for the circulation of the Bill for local opinion all over India was not accepted. The fair and straightforward course for the Honourable the Commerce Member would have been to accept the motion for circulation, but that was not done. I have ransacked the closely printed proceedings of the Assembly for a valid reason for the hurry to carry the measure through, but none has been forthcoming. Sir, I am old enough to take a charitable interpretation of the public conduct of public servants, and I am doubtful whether there is any justification for the suspicion of intrigue which the follow-

[Rai Bahadur Nalininath Sett.]

ing quotation from the *Textile Mercury* of May 30th, 1925, suggests. The quotation runs as follows :

"A suggestion has been made in Lancashire recently that India should be urged to put up a tariff against Japan with the idea of benefiting the Lancashire cotton industry".

I am loth to believe in it, as it implies a betrayal of the country by the millowners of Bombay. Sir, I am from Bengal whose Swadeshi movement gave the mills of Bombay the life-saving panacea, as Mr. Jamnadas Mehta has gratefully acknowledged. I for one cannot regard the millowners to be so devoid of patriotism as to be a party to the intrigue. But, however high my regard for the mill industry of India may be, I want an explanation from them as to why they have succumbed to the first crumb from the bureaucratic table. The smallest help that the Tariff Board recommended has not been given them ; the bounty that was their legitimate due has been withheld ; and the demand that has been advanced for decades for a simultaneous duty on cloth and yarn has been brushed aside, perhaps for a generation. It is lamentable that the millowners of Bombay who alone think that they would be benefited by this measure, organised and educated as they are, should so far forget themselves that for a mess of pottage they have made themselves instruments of a handicap to the handloom industry. That the protection afforded by the Bill is a mere eyewash in the opinion of Sir Purshotamdas Thakurdas and that the Bill is doing what the Tariff Board held to be "undesirable in view of the effect this would have on the handloom industry"—these are two glaring facts which lend colour to the suspicion of *malafides* somewhere.

THE HONOURABLE SIR MANECKJI DADABHOY : Sir Purshotamdas Thakurdas voted for the Bill.

THE HONOURABLE RAI BAHADUR NALININATH SETT : Sir, for the sake of the good name of the representatives of the people who have been given new power, either for use or abuse, I cannot but observe with dismay this sort of passing a legislation to benefit a particular class, however worthy they may be, without taking the opinion of the general body of the public. I am clearly of opinion, the Honourable Sir George Rainy absolved himself, by the way he put his case, from the responsibility of imposing the proposed duty, and the Assembly was not justified in robbing Peter to pay Paul.

Sir, there is another question involved in this measure which appeals to me more than anything else. In the long debate in the Assembly none on the side of the millowners could refute the charge made by Diwan Chaman Lal that in their case the need for help has been made out, only because "capitalistic greed has outrun capitalistic caution." Industrialism is making rapid strides in India, perhaps in legitimate sequence of evolution, but let us not forget that communistic doctrines are also making headway in no less rapid strides. If the capitalistic Government is suspected of allaying capitalistic industry, and of co-operating to "ruin many homes of handloom workers throughout the country," I shudder to think of the reaction that that suspicion will generate. We can ill afford to neglect the teeming millions at every step we take in our economic progress.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU : (Madras : Non-Muhammadian) : Sir, I quite see the anxiety of the Government to safeguard the manufacture of cotton yarn, in India, against foreign competition. I

would have very willingly supported the measure which gives the much needed relief to the mill industry if the measure did not inflict a corresponding loss on the handloom industry. I am quite sure, Sir, the measure is bound to affect the handloom industry, that means the poorer section of our people. Whatever benefit is expected to be conferred on the mill industry is, at least to that extent it will be, a burden on the handloom weavers. The handloom weavers have always been working at a great disadvantage as against the facilities given to, and the influence of, the millowners.

The Indian Tariff Board was of opinion that the imposition of any additional duty on yarn is undesirable in view of the effect it will have on the handloom industry which is about 26 per cent. of the total consumption of cloth in India and that any assistance to be given to the spinning industry is best given in the form of a bounty. The Tariff Board also thought that it would react unfavourably on the position of those mills which have weaving sheds only and are dependent on yarn either locally manufactured or imported. Sir, I want to know why this considered opinion of an expert body like the Tariff Board was brushed aside unceremoniously and Government have set an unprecedented and unwholesome example of giving the shadow of a protection to one indigenous industry at the cost of another. Why waste so much money on the Tariff Board, if its advice is not listened to?

Sir, both the mill industry and the handloom industry are national industries, and, therefore, both deserve the necessary help. It is a matter for deep regret and shame that India should export cotton and import it back in the form of yarn. Why could not she manufacture it herself? Government have failed to help the people and the country in this direction. Look at Japan. Having thus failed in their primary duty, Government even brushed aside the recommendation of the Tariff Board and the people have not the power to force the Government to accept the Tariff Board's recommendation which were in the best interests of the country.

Under the circumstances the best course would have been to impose a duty on foreign piece-goods. That would have helped both the mill and handloom industries.

Sir, the proposal of the Bill instead of adding appreciably either to the industries or of the worker, will ruin many homes of handloom workers in the country, especially in my province of Madras, where there are a large number of handloom workers. I see no reason why the poor should be made to pay for the rich by an Act of the Legislature, in which the opposition has itself pledged to protect the interests of the masses.

For these reasons, Sir, I oppose the Bill. I know, Sir, that this Bill was passed in the other House, in spite of the popular opposition. In this House the result is a foregone conclusion. When this Bill becomes law and the Government realise 10 or 12 lacs of rupees from this new duty, I suggest that the amount so collected should be put at the disposal of Local Governments for the development of the handloom industry. With these remarks I oppose the Bill.

THE HONOURABLE SIR MANMOHANDAS RAMJI (Bombay: Non-Muhammadian): Sir, I rise to support the motion and in doing so I shall briefly try to meet the arguments advanced, namely, that the handloom weavers will be hard hit by this measure of protection to the spinning section

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of the textile mills. This section of the mill industry is in particular need of protection as will be observed from the report of the Tariff Board that a number of the spinning mills had to close down on account of the imported yarn being sold at such a low rate that it would be impossible to manufacture yarn in this country for sale, in competition with the imported yarn, without making a considerable loss, and therefore it is our duty to protect this section of the textile industry. If this protection is not given to the industry, the result will be that this particular section of the industry will have to be permanently closed down and the handloom industry will have solely to depend on foreign imported yarn which will monopolise the supply of yarn to the handlooms, and the result in the long run would be, as pointed out by the Tariff Board, that ultimately the handloom industry will have to pay a higher price for the imported yarn used by them. Now, Sir, let us consider the effect of this measure on the handloom industry. Some of the Honourable Members in this House and also in the other House have argued that the handloom weavers will be adversely affected inasmuch as they will have to pay a higher price for the imported yarn used by them, and as they will have to sell their cloth in competition with the mill-made cloth which will not have to pay any duty. This is to my mind a fallacious argument. There is no competition between the mill-made cloth and the cloth produced by the handloom. The cloth produced by the handloom is quite different in design and quality, and is catering for quite a different taste of consumers on account of its speciality in design and get up, which it is very difficult for the power looms to produce, and in fact it is not produced at all. A majority of the handlooms produce intricate and rich bordered *saris* and scarfs or *choli* cloth of various patterns and designs, and surely the mill-made cloth does not compete with this class of cloth at all. They have their own market and those who want such cloth have to pay for it. Then, again, a large number of handlooms are engaged on cloth made from very fine yarn of count 70s and upward, which will not have to pay any higher duty than they do at present, but on the contrary will have to pay less and will be benefited to that extent by the proposed measure. As for those handlooms which are engaged in producing cloth from imported medium counts of yarn, they will have to pay about half an anna more per lb., which is equal to about a pie per yard of cloth or even less, but the cloth produced from this yarn being of a special quality and design, it will not be difficult for handloom weavers using the medium count of yarn to get the increased price of yarn from the consumer in proportion to the rise in the cost of yarn which is only a negligible amount. It is further argued that the handloom weaver will have to bear the burden of this increased duty because the industry is unorganized. Of course this may happen for a short time but the burden will soon be transferred to the consumer without difficulty. After therefore deducting the handlooms engaged in working on fine and medium counts of yarn, there remains a big percentage of handlooms which work primarily on coarser yarn, say, average count 20s, which pay no duty as it is locally produced, and which on account of the keen competition amongst the local mills due to superfluity of production needs no anxiety on the score of increased price of yarn. The result, therefore, is this, that about 90 per cent. of the handlooms will be using yarn which pays no duty at all,

as those which use finer counts will pay a considerably less amount of duty than they do at present, but of the total number of the handlooms only about 10 per cent. will be affected to a very small extent, but even in this case the weavers will be able to transfer the burden to the consumer, because it is the economic law that the price of the raw materials *plus* the manufacturing charges including a reasonable profit have to be paid by the consumer. So, if any body is to be affected by the proposed measure, it will be the consumer of the special rich cloth and not the handloom weaver. But, if on the other hand, you allow the indigenous mill industry to be ruined, you will be permanently encouraging foreign imports, and will always have to remain at their mercy, and render the country dependent for ever. I think none of us will prefer to be in this position. Another important point while on this subject of handloom industry that one has to bear in mind is, that when machine made cloth has made rapid strides, and has succeeded in considerably reducing the foreign import of cloth, the handloom industry has kept up its own, and has remained steady all these years without being affected in the least by foreign or local competition. Why is this so? The answer is, because there is no competition between the mill-made cloth and the hand-woven cloth. As said above the hand-woven cloth has its own speciality, and its own market and there is no competition of any kind whatsoever between the two. On the contrary, the mill-made cloth has to stand the foreign competition which is either bounty-fed, subsidized or getting some indirect help. Further, let us take into consideration the fact that a 5 per cent. duty on import of yarn came to be levied only a few years back; before that time the import of yarn was duty free. It is not argued by any one that after the imposition of the 5 per cent. duty on yarn the handloom industry has suffered at all.

THE HONOURABLE SETH GOVIND DAS : It has been much affected.

THE HONOURABLE SIR MANMOHANDAS RAMJI : It has got its own market.

THE HONOURABLE SIR DINSHAW WACHA (Bombay: Nominated Non-Official) : Certainly.

THE HONOURABLE SIR MANMOHANDAS RAMJI : On the contrary it has remained absolutely unaffected. How then is it going to be adversely affected when this measure is calculated to affect only 10 per cent. of the handloom industry which uses, as pointed out above, the medium count of yarn? The grievance, if any, of the handloom weavers seems to me to be exaggerated and may not be considered as a serious one . . . . .

THE HONOURABLE SETH GOVIND DAS : Will the price of lower counts not go up?

THE HONOURABLE SIR MANMOHANDAS RAMJI : Now, Sir, although the proposed measure will go to help the mill industry in one section only, which is a very small section, but at the same time an important one, the major portion of the industry which has been clamouring for protection has not received due consideration at the hands of the Government to which it was entitled, namely, 4 per cent. additional import duty on cloth as suggested by the Tariff Board, but as this question is not before us, although I had



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much to say on this subject, I do not propose to go into the merits of that question.

Sir, my Honourable friend Dr. Rama Rau said that Japan is paying handsomely to encourage this industry. I know it is the case, and I may tell the House that it is that encouragement which has brought us into our present position. Therefore, Sir, we have to devise some means by which we can meet the competition from Japan.

Then, Sir, it was asked why my Honourable friend Sir Purshotamdas Thakurdas said certain things in the other place. Of course, he had to say what he did say because he thought that the protection afforded by this measure was not sufficient, but he had voted for this measure willingly. With these few words, Sir, I support the motion.

\*THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General). Sir, I cannot congratulate the Government on this measure. I carefully read through the Report of the Tariff Board, the Report of the Select Committee, and the discussions which took place in the other place. And what is the result of my reading of these? I found myself between the devil and the deep sea. On the one hand, I find a large prosperous, promising national industry, employing about 4 lakhs of employees and supplying 42 per cent. of the textile requirements of India, is in very great peril. On the other side, I find there is another large national industry, which caters to the textile requirements of India to the extent of 26 per cent. and employs as many as 6 millions, is likely to be hard hit by the measure which is proposed. Sir, there is a difficulty in deciding which of the two interests you are willing to sacrifice. That is the plain and simple question, and there I agree that it is a simple measure because it is a question of deciding as to which interest you are willing to sacrifice.

Sir, the handloom weaver, owing to his weak economic position, will not be in a position to bear any additional burden, and I think even a small additional burden to him will deal a knock-out blow to a large section of people engaged in this industry. I know also, Sir, that, owing to his weak economic position, he will not be in a position to shift any portion of this burden on to the consumer if left to himself. Sir, in these circumstances, it is rather hard to support a measure which is designed to deal a knock-out blow to at least a considerable section of the handloom weavers. But still, Sir, we have got the other side of the question and we have to come to a decision. I think it is an ordeal and it is our painful duty to come to some conclusion and I have in my own mind decided to support the measure on this ground. Sir, my main reason is this. The Government take the entire responsibility for this measure. It is apparently clear, and the rules make it quite clear that it is not possible for the Select Committee or for the Legislature to enlarge the scope of the Bill, or to suggest alternative methods, and our friends in the other place tried their level best to see if the Government would accede to their request for considering an alternative suggestion in Select Committee, and that has been ruled out. It is not open to the Legislature to enlarge the scope of the measure, so under the circumstances the Government take the fullest responsibility for the measure,

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\* Speech not corrected by the Honourable Member.

inadequate as it is, halting as it is, and likely to bring about baneful results and to hit hard a national industry. Under these circumstances, if they take the fullest responsibility for this measure, I think it is the duty of the Legislature to support this measure and to allow them to take the fullest responsibility. Otherwise the position is this. If owing to our failure to give even this inadequate support to the mill industry, the mill industry were to perish, then the whole responsibility will be on the shoulders of the representatives of the people. This is the main ground on which I want to support this measure which I would characterise as an act of melancholy meanness affecting a national industry consisting of millions of voiceless people, people who cannot make themselves heard and who would be in a very sorry plight if this measure is passed into law.

We are told, Sir, and I have heard a good deal of it, that it will be an insult to our national dignity to accept this measure. Sir, beggars cannot be choosers, to use an expression which my friend Sir Geoffrey Corbett used with reference to this industry. (*Honourable Members* : "No, no"). And I find if the industry concerned requires this measure as it is just now, I do not see any reason why the Legislature, actuated by sentimental considerations, should stand between the giver and the taker. (*An Honourable Member* : "Not sentimental considerations.") Yes, I regard it as purely sentimental, apart from the mere fact that it will hit the handloom people.

There is another consideration, Sir, which appeals to me. This industry is very difficult to build up. It has been built up at considerable cost by our experts in Bombay and other places, and if perchance, owing to the failure to give this measure of protection, the industry were to perish, it would be absolutely impossible to rebuild it. If thousands of these handloom weavers are thrown out into the streets as beggars, as I believe will be the case, then there is a chance, however remote, of the Government realising their blunder very soon and taking adequate measures to see that the handloom weavers are enabled to resume their operations, whereas in the other case an industry which is a great national asset will be affected beyond repair.

There is one other reason which weighs heavily with me. Here in this Bill, the principle of this Bill is the protection of the textile industry. Sir, if you accept the Bill, you accept the principle of protection. If you do not pass the Bill and it is thrown out then there is a danger of the interpretation that the Legislature is definitely against the principle of protection for the textile industry. (*The Honourable Seth Govind Das* : "Certainly not.") Oh, I do not mean to say that is the proper interpretation, but there is a danger of such an interpretation being put, and I am afraid the door to the protection of the textile industry, if we make out a case for better protection, will be definitely closed.

There is one other reason and that is the main reason which weighs with me, it is this. The other House, after a good deal of deliberation, passed this measure by 68 votes to 37. And I do consider, Sir, it is the duty of this House as a revising Chamber not to interfere lightly with the decisions arrived at in the other House by such a majority, unless the other House has obviously and hopelessly blundered. (*The Honourable Seth Govind Das* : "This House always does it.") Very well, this is the rule, and I propose to act upon this rule and that is my view of the case. Therefore, Sir, I am constrained to support

[Mr. P. C. Desika Chari.]

this measure though I do not like to disguise the fact that I do not like this measure at all. I am constrained to do it for the reasons which I have set forth.

Sir, before I sit down, I would urge upon the Government the supreme necessity of directing their attention to what is contained at the end of the Select Committee's Report, namely, that the Government of India ought to address Local Governments to watch the result of this measure and ask them to report at least within six months the effect of this measure upon the handloom industry. I think, Sir, the blunder of this measure will be very soon evident. I do not like to take the responsibility on my shoulders, though there is very little responsibility here and though I want to support the Government and leave them entirely to take the full responsibility on themselves. I believe, Sir, they will realise their blunder very soon and before it is too late they will take measures to remedy the disastrous consequences. In another place a suggestion like that which my Honourable friend Dr. Rama Rau proposes was made that this duty, which is a protective duty and not a revenue duty, ought to be applied to the improvement of the lot of the handloom weaver and to foster that industry through the various Local Governments. I believe the Honourable the Commerce Member, who was not inclined to give any opinion off hand in the other House, has had ample notice of this suggestion, and I hope and trust he will come out now with his own opinion on the suggestion and that he will favourably consider the suggestion and use the proceeds of this duty for the benefit of the industry which is hard hit.

With these words, Sir, I am constrained to support the measure.

THE HONOURABLE SIR GEORGE RAINY (Member for Commerce and Railways): I think, Mr. President, that the arguments directed against the consideration of the Bill fall in the main under three heads. One reason given is that the proposals in the Bill are not in accordance with the recommendations of the Tariff Board, the second is that the benefit to the mill industry will be very small indeed, and the third is that the injury to the handloom weaver will be very large. I think that practically covers them.

The first point I want to make is this. It is really impossible for the same speaker to hold intelligently both the third objection and the second objection. All we are proposing to do is to increase the duty on cotton yarn. Now, if this measure produces any effect at all, it must be to raise the price of yarn in India. In so far as the price is raised, the mills will receive a higher price for the yarn they sell, and conversely, the handloom weaver will have to pay a higher price for the yarn he buys. If the benefit to the mills is very small indeed, it follows inevitably and at once that any loss to the handloom weaver will also be very small indeed. If, on the other hand, the injury to the handloom weaver is serious, then it is impossible to hold that the benefit to the mills is negligible. I think it is rather important to emphasise that point, because we are at times apt to argue in a manner which does not bring the various points together. In one part of his speech a speaker can argue that a certain result will follow, and in another part of his speech another result will follow and may not observe that the two are inconsistent.

I should like to turn next to the argument that the proposal in the Bill is open to objection on the ground that it is not in accordance with the recom-

recommendation of the Tariff Board. Naturally that is an argument which ought to appeal to me very strongly in view of the fact that I was more than once in a position, if I had felt like it, to have complained of the action of the Government of India in not accepting to the full some recommendation I had concurred in placing before them. Nevertheless, I never did it. When I occupied the position of President of the Tariff Board, I do not think I ever took up that attitude, and I certainly cannot accept it to-day. What I have said more than once—it has been my view from first to last—is this, that the Government of India and the Legislature will usually be wise if they accept the findings of the Tariff Board on the facts, for this reason, that if they are unable to accept the findings of facts, then the whole structure collapses. It is impossible for the Government of India or the Legislature to do the detailed work which is necessary if a satisfactory finding on the facts is to be arrived at. Of course the Tariff Board may go wrong. I am perfectly conscious of that. But still, on the question of facts, they are a great deal more likely to be right than anybody else. The recommendations of the Tariff Board are quite another matter. There I do not consider that the Tariff Board are necessarily in a better position than anybody else to decide what in all the circumstances of the case is the best policy to follow. In that matter it is entirely within the province of the Government of India and the Legislature to decide for themselves what line of action should be adopted. In this particular case there is one obvious difficulty which my Honourable friend Seth Govind Das did not refer to, namely, the fact that the Board were not unanimous. Quite obviously, in these matters, a great deal more weight must be attached to the opinion of the Committee or Board when it is unanimous than when it is divided in its opinion, and therefore.....

**THE HONOURABLE SETH GOVIND DAS:** Follow what the majority said.

**THE HONOURABLE SIR GEORGE RAINY:** ....and therefore, when the Government of India are charged with brushing on one side the recommendations of the Tariff Board, the question at once arises which of these recommendations they should accept. I know quite well that the recommendations my Honourable friend Seth Govind Das was referring to are the recommendations of the majority. On the other hand, I think he and other Members of the House are well acquainted with the fact that Mr. Noyce has very special knowledge of the cotton industry, and that his opinion in a matter of that kind would always be entitled to great weight. Nevertheless, he and the majority of the Board did not agree on the most important points. In these circumstances, what could the Government of India do except come to their own conclusions? And that is in fact what they did. They have accepted the findings on the facts of the Tariff Board, and where the findings on the facts of the majority and the minority differed, they accepted the findings of the majority.

**THE HONOURABLE SETH GOVIND DAS:** What did Government think up to the 7th of June? The decision of Government on the 7th of June was entirely different to what it is now.

**THE HONOURABLE SIR GEORGE RAINY:** That is perfectly true, Sir. But I do not know that it has any particular bearing on the point which I was endeavouring to develop at the moment.

[Sir George Rainy.]

Coming now to another point, my Honourable friend Seth Govind Das drew attention to the fact that imports of yarn from Japan were increasing, and imports from the United Kingdom were decreasing, and he also drew attention to the fact that there had been no corresponding increase or diminution in the imports of cloth. Therefore, he said, this is the secret—I think these were his words—this is the secret of the Bill. And he appeared to suggest that there was some Machiavellian policy underlying the Bill by which the interests of the United Kingdom were to be served at the expense of Japan and everybody else. Well, I cannot honestly say that I can plead guilty to this charge of a deep-laid Machiavellian policy, and indeed, I feel that in attributing such a policy to me, my Honourable friend does something less than justice to my intelligence, because if that were my object, it seems to me that the procedure adopted is a very peculiar one. The Government of India had before them a recommendation of the President of the Tariff Board that a differential duty should be imposed on imports from Japan only, and quite obviously, the adoption of that course would have been in substance a measure of British preference. If my object was what was attributed to me, the natural course to follow would have been to accept Mr. Noyce's proposal. The actual course which the Government of India are asking this House to adopt to impose an additional duty on yarn imported from all countries including the United Kingdom—surely that plan was singularly ill-conceived if its motive was the motive which has been attributed.

I should like to come now to what is, after all, the main question which this House has to decide to-day. I frankly admit, as I have already admitted in another place, that to the extent to which the mill industry in India benefits, to the same extent there must be some loss, or some injury, to the handloom weaver. It is useless to close our eyes to that fact, and the House to-day has to come to a definite decision on the question which of these interests, in all the circumstances of the case, ought to prevail and ought to have the preference. My Honourable friend, Mr. Chari, complained of the choice which was thrust upon him, and with a boldness of language which I should have hesitated myself to use, he said he had to choose between the devil and the deep sea. He did not particularise further, nor did he indicate whether the mill industry was the devil or the deep sea, and certainly I have not the courage to decide which designation is most appropriate, but I had hoped when he said that he was going to support one party, that he might tell us which was the devil and which the deep sea. My hopes, however, were disappointed. He was prepared, he said, to support the motion provided the Government took the fullest responsibility, and, I think in his mind he added, provided he did not share in the responsibility.

THE HONOURABLE MR. P. C. DESIKA CHARI: I said so.

THE HONOURABLE SIR GEORGE RAINY: I recognise frankly that a very heavy responsibility rests on the Government, as it always must rest in these cases on the Executive Government. Clearly we at least cannot disclaim responsibility, but I fear that my Honourable friend must also take his share in this act of "melancholy meanness" as he called it.....

THE HONOURABLE MR. P. C. DESIKA CHARI : The meanness is not ours, because we cannot enlarge the scope of the Bill or make it different.

THE HONOURABLE SIR GEORGE RAINY : I am afraid I must leave it at that, that a share of the responsibility will rest with him, and indeed, in the nature of the case, that must be so. When the House has voted to-day, it will, in fact, have decided the question whether, on the whole, it is better that some benefit should be given to the mill-owners even at the cost of some loss to the handloom weavers or not. It will decide it, and having done so, it cannot possibly divest itself of its own responsibility.

THE HONOURABLE SETH GOVIND DAS : What do you think will be the loss to the handloom weavers ?

THE HONOURABLE SIR GEORGE RAINY : I was just about to come to that point. I have examined this question as closely as I could, and the general position seems to me to be this. In the first place, there are the higher counts, counts above 40s., and more particularly, above 60s. I think it is true to say that the  $1\frac{1}{2}$  annas duty will not affect the price of yarn of counts above 60s. and will only affect to a slight extent the price of yarn between 40s. and 60s. That is to say, the handloom weavers who weave the very special kind of cloth from the higher counts of yarn will not be affected at all. But even if they were affected to a slight extent, as pointed out by my Honourable friend, Sir Manmohandas Ramji, they are catering for a rather special market, and in all probability they could pass on to the consumer any small increase in their costs. Then, again, there are the lower counts of yarn, that is to say, counts below 30s. The imports of such counts only amount to 2 million pounds a year, whereas I think the Indian production amounts to something over 750 million pounds. Now, in the nature of the case, if that is so, the price of these lower counts of yarn must be determined mainly by internal competition. It is true that the Tariff Board were of opinion that the price of these lower counts of yarn must be affected by the price of imported yarn between 30s. and 40s. What they said was that the low price of the Japanese yarn from 30s. to 40s. exercised a depressing effect on the price of all counts. I have no doubt that within limits that argument is a correct one. But the view I would suggest to the House is this. It may be quite true that the price of the imported yarn between 30s. and 40s. exercises an influence which prevents the price of the lower counts from rising. But it does not follow—even if the imported yarn was out of the market altogether—it does not follow that the price of the lower counts would rise, because there may be other influences at work, and all the facts point strongly to the conclusion that the price of the lower counts is determined mainly by internal competition. But let us suppose that the effect of the duty was at the outset to raise to some extent the price of these lower counts, what would be the immediate result ? There are a number of mills all over India which are not producing at present, and as soon as prices became profitable and remunerative, those mills would commence to work again, internal competition would increase, and the price would again come down. Apart from any question of the mills which are not working at present, there is also the fact that the mills at present working would be capable of expanding their production without very much difficulty. In 1926-27, there was a very remarkable increase in the output of yarn in India, and in fact, the actual output was 12 per cent. higher than it has been in any previous year. Finally, we come to the medium

[Sir George Rainy.]

counts between 30s. and 40s. I anticipate that the effect of the duty may be to increase the price of that class of yarn to something approaching the full extent of the difference between the 5 per cent. duty and the  $1\frac{1}{2}$  anna duty. The total quantity of such yarn imported into India, or produced in India, is a little over 50 million pounds a year. More than half of that quantity consists of the yarn spun by the Indian mills, and we know that the mills weave the greater proportion of the yarn of this kind they spin. Therefore, it seems probable that the amount of yarn between 30s. and 40s. counts consumed by the handloom industry is not more than about 25 million pounds. It was on that figure of 25 million pounds that one speaker in the other place—I forget who it was—calculated that the injury to the handloom weaver all over India would come to 12 lakhs. At any rate, if I am right in believing that that is the extent of the injury which the handloom weaver is likely to suffer, what it means is that only about 10 per cent. of his production will be affected.

I have endeavoured, Mr. President, to state the case fairly. It is a matter in which this House has to come to a definite decision and weigh against each other the interests of two important classes of the community. I would ask the House to consider the matter carefully and with a full sense of responsibility, but I have no hesitation on behalf of the Government of India in asking them to support the Bill which is now before the House.

THE HONOURABLE THE PRESIDENT: The question is:

“That the Bill further to amend the Indian Tariff Act, 1894, in order to protect the manufacture of cotton yarn in British India, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR GEOFFREY CORBETT: I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

### INDIAN TARIFF (AMENDMENT) BILL.

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary): I move that the Bill further to amend the Indian Tariff Act, 1894, as passed by the Legislative Assembly, be taken into consideration.

One of the most interesting Chapters in the Tariff Board's report is Chapter IV, which deals with the world causes that have contributed to the depression in the cotton textile industry. The Board point out that this depression is not confined to India, but is worldwide. And of these world causes the most important is the gap that has appeared between the prices of raw produce and the prices of manufactured articles generally and of manufactured cotton goods in particular.

The Board point out that until the war the normal tendency of prices was to move in favour of the primary producer, and so increase his capacity to purchase manufactured goods. But since the war, the movement has been in the opposite direction. In other words, as compared with the pre-war figure, the index number of manufactured goods has been higher than the index number of raw produce. In India the agriculturist is by far the most important primary producer, and at the same time by far the most important purchaser of manufactured cotton goods. And the inevitable result of this movement of prices has been that the capacity of the agriculturist to purchase cotton goods has diminished, and this is the ultimate cause of the depression.

I have had these figures worked out in detail, and I have found that the index number in India for the price of cotton manufactures is now 158 as compared with 100 pre-war. But the corresponding index number for the price of raw produce is only 128. It follows that the relative capacity of the agriculturist to purchase cotton manufactures is now about 20 per cent. less than it was in 1914.

I have tried to explain this in some detail because it is really the underlying justification for the very substantial sacrifice of revenue that this Bill involves, amounting to about Rs. 85 lakhs in a full year. As I have said, the ultimate cause of the depression is this gap that has opened between the price of raw produce and the price of cotton manufactures. It follows that the only ultimate remedy is to close this gap. Anything that tends to reduce the cost of manufacture will operate to narrow the gap. And, on the other hand, anything that tends to widen the gap still further is likely only to prolong and accentuate the depression.

The removal or reduction of the duty on machinery and materials of industry which this Bill proposes, will operate to reduce the cost of manufacture and so to narrow the gap. It is, moreover, in accordance with the general recommendations of the Fiscal Commission, and it is also in accordance with the principle that has been accepted by the Government and the Legislature, that our fiscal policy may legitimately be directed towards fostering the development of industries in India.

Sir, I do not think that this Bill requires any further justification, and I need not detain the House by explaining in detail the long list of changes that it makes in the Import Tariff Schedule, and the long list of items on which the duty is removed or reduced. I will confine myself to two more general questions on which the Government have diverged from the recommendations of the Tariff Board.

In the first place, the Board recommended that the duty on machinery and stores should be remitted for three years only, and that the position should then be reconsidered. I wish to make it clear that there is no such time-limit in this Bill. It is no mere temporary concession, but should be regarded as part of our accepted policy that machinery and the materials of industry should, as far as possible, be free of duty, in order to foster the development of industries in India.

Secondly, the recommendation of the Board was confined to the cotton industry. Generally speaking, the duty was only to be remitted when the machinery or stores were imported by the cotton mills or for sale to the cotton



[Sir Geoffrey Corbett.]

mills. I wish to make it clear that this Bill is of general application, and does not take into consideration the purpose for which an article is imported. In giving effect, as revenue considerations permit, to the general principle that machinery and the materials of industry should be duty-free, we are prepared to give precedence to articles used chiefly by industries which are passing through a period of depression. But we are unwilling to discriminate between industry and industry by remitting the duty for one, but not for another, on the same article. Such discrimination would not only be unfair in itself, but incidentally it would be very inconvenient for the customs administration; and it would indeed be contrary to a long established principle of our tariff, which was in fact laid down so long ago as 1894.

One point more, and I have done. Some machinery is already being made in India, and we hope that more will be made in the

1 P.M.

future. Thus there may be cases in which it may be necessary to impose a duty on certain classes of machinery which are being manufactured in India, either for protective purposes, or to give what is called equal tariff treatment. I wish to make it clear that the removal of the duty on machinery which is now proposed is subject to any modification that may be found necessary to provide for such cases, after they have been properly inquired into by the Tariff Board.

Sir, I move.

THE HONOURABLE SIR MANMOHANDAS RAMJI (Bombay: Non-Muhammadan): Sir, I rise to support the changes that are proposed to be effected in this short Bill. It was a matter of regret that for so many years the articles used as stores in different departments of the textile mills were charged a very heavy import duty, and the attention of the Government was drawn to this on several occasions, but to no avail. The Government went on collecting this heavy duty side by side with the obnoxious excise duty, and it was only when it was proved before the Tariff Board that the industry was suffering from foreign competition and an unnecessary heavy charge by way of payment of customs duty on the stores imported from foreign countries, and could no longer stand such a heavy burden but was in need of protection, that the Government came forward to give an indirect help to save the industry from ruin. I may say, Sir, this cannot be called a help to the Industry at all. It was only a legitimate claim of the industry, for as a matter of fact the heavy duty on articles of stores should not have been allowed to be levied at all. In these days when the world nations have adopted the policy of protection, it is a matter of regret that it took such a long time to convince the Government that the textile industry could not stand unfair foreign competition without protection, and although by this measure the industry does not get a direct protection, it will be getting only a partial relief by way of getting a few articles of stores and machinery free of duty.

While on this subject, it is a matter of regret to find that one of the measures proposed in the Bill as originally drafted by Government was to abolish the existing  $2\frac{1}{2}$  per cent. duty on imports of printing types, but fortunately the Select Committee turned down this proposal and have altered the Bill so that the imported types would pay a duty of  $2\frac{1}{2}$  per cent. as heretofore. I

may submit, Sir, that this alteration is not sufficient to meet the demand of the indigenous type foundry industry for the raw materials used in type foundries, viz., antimony, tin and lead are subject to a 15 per cent. import duty, whereas the Bill provides for a duty of  $2\frac{1}{2}$  per cent. on imported types. I ask the House, is it fair and just to compel a new industry to pay a 15 per cent. duty on the raw materials and sell types manufactured by them in competition with imported types from foreign countries which pay a duty of only  $2\frac{1}{2}$  per cent? Leaving aside the question of protection for a new growing industry, I ask the House, is it not enough to kill any industry when it has to face foreign competition to the extent of  $12\frac{1}{2}$  per cent. by way of paying a heavy duty on imported raw materials and has to sell its manufactures, in competition with imported finished articles which pay a duty of  $2\frac{1}{2}$  per cent only? A responsible Government on the contrary would have allowed foreign raw materials duty-free, (*The Honourable Dr. U. Rama Rau*: "But ours is not a responsible Government.") and would have put on a heavy duty on the imported finished articles for the advancement of their indigenous industries.

Unless such a policy of protecting new industries is adopted by the Government, no industry is likely to exist in this country. Besides, what is stated above, one also finds that the Select Committee have overlooked the fact that the lead and brass rules, wooden and metal quoins, metal furniture and sundry articles made by type foundries in India and used in printing presses are proposed in the amending Bill to be allowed to be imported duty-free, which also goes to aggravate the hardship of the type foundry industry in competition with similar articles imported from foreign countries when they have to pay a heavy duty on raw materials. I hope the Commerce Department will soon adopt measures to give relief to the type foundry industry of India which is in great need of protection and deserves sympathetic consideration at the hands of the Government.

\*THE HONOURABLE SRIJUT LOKENATH MUKHERJEE (West Bengal : Non-Muhammadan): Sir, I am really surprised to learn that duty on artificial silk yarn is going to be reduced without consulting the Industries Department of the Local Governments. I know, Sir, our indigenous silk industry is not so well organised as the Bombay mill industry, but can they not claim care and protection at the hands of the Government? The constitution of the Government has made them unmindful of the moves taken from these Olympian heights to import artificial rivals to their articles of manufacture. Is it at all fair, is it at all just that they or their protectors in the Local Governments should not even be consulted in this matter? I must raise my voice of protest against this hard blow to the silk industry which, in Bengal, is the livelihood of so many people. Artificial silk is flooding the market as times are favourable to artificiality and counterfeits, and as cheapness is a factor which appeals to our poor consumers. But Government should not encourage the spurious to take the place of the real. Sir, it is not a question of sentiment, it is not a question of facilities, it is a momentous question of policy that artificial things should not be encouraged to the detriment of the articles.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan): Sir, I rise to support the motion partially. The Honourable Mr. Lokenath Mukherjee has rightly asked the Honourable the

[Lala Ram Saran Das.]

Commerce Member to explain what led the Government to reduce the duty on artificial silk ; and I also want to ask what was the reason for reducing the duty on printing types ? In this connection, Sir, I want to make one observation and that is, that India is and was famous for its woven fabrics and we now find that the result of measures like this is to bring in artificiality in place of reality. Some time ago, Sir, the import duty on gold thread was reduced which resulted in giving a great shock to the gold thread industry in India ; and instead of getting the genuine cloth we are now getting a sort of very inferior imitation gold cloth. The same will be the result as far as silk fabrics is concerned, because, we find, Sir, that in 1921-22 the import of artificial silk which was only 75,000 pounds in 1925-26, has risen to 26,70,000 pounds now. Thus the increase in the imports is enormous which shows that the ordinary lay buyer, who does not know anything about silk, is buying artificial silk cloth as real silk cloth. And in addition to that, Sir, the man who buys the artificial cloth loses ultimately by buying it cheap because the cloth does not last so long.

As regards printing type, the Honourable the Commerce Secretary has already observed that in case any harm is done to an indigenous industry, the Government will reconsider the matter. Type foundries are now coming into existence on a large scale and they are just beginning to pay their way, and this reduction in the type duty will tell upon them. With these two exceptions, Sir, I support the motion.

THE HONOURABLE SIR GEORGE RAINY (Member for Commerce and Railways): I have intervened at this stage, Mr. President, to explain briefly the two points about printing type and artificial silk yarn which have been raised by the two speakers who have already spoken. As regards printing type, the effect of the Bill, as it now stands, is to maintain *the status quo*. The duty is  $2\frac{1}{2}$  per cent. at present, and it will continue to be  $2\frac{1}{2}$  per cent. if the Bill is passed into law. The only reason for including it originally in the list of articles from which the duty was to be removed altogether was to maintain uniformity as regards the materials and machinery which had hitherto been dutiable at  $2\frac{1}{2}$  per cent. and in future are to be free of duty. The main reason for trying to maintain uniformity in these matters is that our definition of machinery in the Tariff Board Schedule is a general definition, and that usually it is not possible to differentiate between one kind of machinery and another. It was, however, pointed out in the Select Committee appointed by the other House that it ought to be possible, without causing any administrative inconvenience, to differentiate between printing type and certain other kinds of printing materials and the machinery generally, and that it was very undesirable, since the manufacture of type had been commenced in India recently, to prejudice that manufacture by removing the duty on the finished product. That view was accepted by the Government of India and by the Legislative Assembly. But my Honourable friend Mr. Manmohandas Ramji has said that this is not enough and that the Government ought to have proposed an increase in the duty on printing type. As regards that, I should like to say, that such a proposal is really outside the scope of the Bill not in a technical sense, but substantially, because the declared object of this Bill is to assist industries, by reducing or removing duties, and any proposal directed

to protecting some particular industry by raising a duty would be out of place. I may mention, however, that at least one manufacturer of type has already put in an application to the Tariff Board, and we expect that the Tariff Board will report about that shortly. That will be the proper time to consider whether it is advisable that the duty on printing type should be raised.

Now, I come to the question of artificial silk yarn. That is a textile material which has come into use very rapidly during the last few years. I think myself that perhaps the name is a little unfortunate for it suggests that it is a material in all respects comparable with real silk and likely to compete with real silk. Now, whatever may have been the case 5 or 6 years ago, the circumstances to-day are such that, irrespective of any duty imposed upon artificial silk yarn in India, that yarn is in a position, owing to its lower price, to knock real silk yarn completely out of the market, if in fact they are in competition with each other, because the price of artificial silk yarn is only about one-third of real silk yarn. If it was thought that steps should be taken to raise the price of artificial silk yarn to about the same level as real silk yarn, I am afraid a 200 per cent. duty would be necessary, which would be a very drastic step to take. Actually, however, all the evidence we have points to the conclusion that, if there is any competition, artificial silk yarn is rather in competition with cotton yarn than with any other textile yarn. During the last few years there has been a very remarkable increase of the consumption in India—in the last two years the imports have doubled—of piece-goods made from a mixture of cotton and artificial silk yarn. The attraction which artificial silk yarn apparently has for the purchaser is that it improves the decorative appearance of the fabric and generally makes it look more attractive. Now, some of the cotton mills in India and also a number of handloom weavers, particularly in Madras, have begun to weave fabrics of this kind, using both cotton yarn and also imported artificial silk yarn. About 18 months ago the Bombay Chamber of Commerce wrote to the Government of India suggesting the removal of the duty on artificial silk yarn, but at that time the Government of India were unable to accept the suggestion, owing to the loss of revenue involved. I took the opportunity, when I was in Bombay last April, to consult the Bombay Millowners' Association on that subject, and the millowners assured me that they entirely supported the proposal of the Bombay Chamber of Commerce, and that it would be a great benefit to them if the duty could be reduced or removed. We took such steps as were possible to obtain information as to the extent to which it was used by the handloom weavers and we had a statement from the one large importer in Bombay that he believed that the handloom weavers took about two-thirds of the imports.

THE HONOURABLE SETH GOVIND DAS (Central Provinces : General) :  
But, Sir, have you consulted the National Chamber of Commerce of Bengal ?  
They have sent us a wire and they say :

“The Bengal National Chamber of Commerce holds reduction of duty on foreign artificial silk will have injurious effect on Bengal silk industry and strongly opposes reduction.”

THE HONOURABLE SIR GEORGE RAINY : I have seen a telegram from the Bengal National Chamber of Commerce, but I was endeavouring to

[Sir George Rainy.]

put before the House the information on which the Government of India based their proposal. They were definitely informed that it would be of appreciable benefit both to the cotton mills and to the handloom weavers. It is quite clear that the public are demanding this new kind of fabric in which artificial silk plays a part, and the only result, as far as I can see, that the reduction of the duty can have is that more of these fabrics will be made in India and less will be imported from abroad. As regards the telegram from the Bengal National Chamber of Commerce, I must again draw attention to the fact to which I have already alluded that the price of artificial silk yarn is about one-third of the price of real silk yarn. In these circumstances, a reduction of the duty from 15 to 7½ per cent. must have an absolutely negligible effect in promoting the substitution of artificial silk yarn for real silk yarn.

THE HONOURABLE RAI BAHADUR NALININATH SETT (West Bengal: Non-Muhammadan): Sir, I object to the inclusion of "artificial silk yarn thread" in the Schedule to the Bill, that is to say, as an article upon which duty is to be reduced. Here again the interests of the indigenous silk industry are being sacrificed to the Bombay millowners. At page 213 of the Tariff Board Report, paragraph 105 lays it down that :

"the concession of free entry enjoyed by cotton mill machinery and mill stores prior to 1921 should again be granted."

At page 179, paragraph 94 of the Report is head (c) *Remission of duty on machinery and mill stores*, and further down in the same paragraph a list of articles which were admitted free of duty has been given, and another list of mill stores which will be totally exempted from import duty has also been given. None of the lists contains any mention of artificial silk yarn. Nor does the Resolution of the Government of India, dated the 7th June 1927, make any mention of this item as a necessary article "used chiefly by the industries which are passing through a period of depression." Sir, I have to bring it to the notice of this House that this matter of reduction of duty on artificial silk yarn from 15 per cent. to 7½ per cent. when the import of this article is increasing by leaps and bounds in spite of the 15 per cent. duty, was never made a subject for communication with the Transferred Departments of the Local Governments. Those who deal with crores and crores of public revenue may afford to sacrifice 7½ lakhs of rupees out of it. But when we take into consideration the niggardly way in which contributions are doled out in support of industries, specially in Bengal, one is constrained to inquire into the propriety of encouraging a foreign imported article by reducing the duty on it.

Sir, the admixture of this artificial silk yarn in the texture of cotton cloth or silk cloth is a fraud on the consumer, because it makes the cloth far less lasting. The Honourable the Commerce Member has taken up a plea that this reduction will supply a cheap article for the use of the handlooms and mills. He did not touch on the question—how. The answer is very simple. They will be enabled to produce shoddy fabrics. The lure of eye will replace the counterfeit in the place of the real silk. This is what I take strong exception to in the argument in support of this reduction.

Sir, I would not have raised my voice against this proposal had I not been certain that these counterfeit articles will injure the real articles to a great extent. Moreover, the way in which this surprise has been sprung upon the indigenous silk trade has been very very unfair.

Sir, in the other House the Honourable Sir George Rainy remarked :

“ It is a very simple question, whether or not the duty on artificial silk yarn should be reduced from 15 % to 7½ %.”

He was not keen on it, and I appeal to the Honourable Member in charge of the Bill to leave the duty on this article at 15 per cent. to prevent an impending harm to the indigenous silk industry.

THE HONOURABLE THE PRESIDENT : The question is :

“ That the Bill further to amend the Indian Tariff Act, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

Clause 2 was added to the Bill.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR GEOFFREY CORBETT : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

#### STATEMENT BY THE LEADER OF THE HOUSE.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : It will be remembered, Sir, that our meeting to-day was arranged with a view to the laying of an important Bill which we had hoped would be passed in another place yesterday. That hope has not been realised, and the Bill cannot now be passed by the Assembly before Monday next. In these circumstances, I suggest, Sir, that you might consider the possibility of so arranging our hour of meeting after the luncheon adjournment on Monday so as to admit of the Bill, if passed elsewhere, being laid here on that day. If this course is adopted, and if the Bill is duly passed by the Assembly on Monday, the question of the date on which it should be proceeded with here will be a matter for consideration after the Bill has been laid.

THE HONOURABLE THE PRESIDENT : The statement just made by the Honourable the Leader of the House places the Chair in a position of some difficulty. The House knows that when there is any question of waiving the three days' notice in respect of a Bill passed elsewhere and laid on the table in this House, it has always been my practice to consult Honourable Members as to whether they are prepared to go on with the Bill at short notice instead of wait-

[The President.]

ing for the three full days. It is certainly impossible for me to ask Honourable Members to express any opinion whatever now about a Bill which has not yet been passed and which is still open to amendment in another place. I hope, however, if and when the Bill is laid on the table in this House, Honourable Members will be prepared to assist me in coming to a decision in the matter.

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The Council then adjourned till Eleven of the Clock on Monday, the 19th September, 1927.

## COUNCIL OF STATE.

*Monday, 19th September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### RESOLUTION *RE* RAILWAY BETWEEN INDIA AND BURMA.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, I do not propose to detain the House long over this Resolution. I am not an expert in railway matters and I only propose to lay before you the layman's point of view—the point of view which is generally accepted by people who do not know the reports of the various surveys which have been undertaken. We have been told, Sir, that one of the main principles on which railway policy is based is that of connecting the capitals of the various provinces by means of railways. It is a matter of great regret that the Indo-Burma railway connection, which is a natural corollary to this policy, has been indefinitely relegated to the background. The result is that the people who live within a short distance of the borders of Assam, the adjoining province, have to go hundreds of miles to Rangoon and then cross the seas by boat after a voyage of two or three days. Matters were brought to a head during the war when a single German man-of-war rendered the Bay of Bengal quite unsafe. Added to this, very great inconvenience was experienced in finding ships for freight and passengers, and the freights in some cases rose ten-fold. Burma was practically isolated from India during the war. The Government of India being impressed, I believe, with the urgent necessity of the Indo-Burma railway connection had the Hukong Valley route surveyed, and the survey was finished in or about 1919. There was a talk of railway connection to be immediately started, and according to all accounts the Hukong Valley route was regarded as a practical proposition. The report of the survey was shelved in the archives of the Railway Board, secure from the vulgar gaze of people like me ; it never saw the light of day and even to-day the Railway Board treats it as a very confidential document and will not allow perusal to any Member of the Legislature. But I am grateful indeed to the Honourable Sir Geoffrey Corbett for arranging to give me some insight into these things, and asking Mr. Lines of the Railway Board to explain to me the various surveys which have been undertaken and the various possibilities of a railway connection. After I got some knowledge of these things at the hands of Mr. Lines, I am more than ever convinced that it is a matter of urgent necessity to connect Burma with India. The Government of India, for reasons best known to themselves, have practically abandoned this Hukong Valley route and have been considering other routes—Chittagong to Akyab and Akyab to Pakokku through the An Pass of the Yoma Hills.

I shall first deal with the Hukong Valley route which I consider to be the easiest and the most feasible route over a length of 272 miles or thereabouts. My information is that throughout this line the gradient is only one in a hundred,



[Mr. P. C. Desika Chari.]

while in the case of metre gauge lines they can stand easily a gradient of 2 in 100. There are only two or three very small tunnels to be made, and the total cost of the line according to war conditions was estimated at about 6 crores and at present would be about one crore less. There were said to be two bridging projects of importance involved, namely, the bridges to be constructed over the Brahmaputra and the Irrawaddy. The bridge over the Irrawaddy has been since sanctioned at Sagaing, and I therefore thought it opportune to bring forward this Resolution. From inquiries I was able to make I understand that the Hukong Valley is a very fertile region, showing traces of extensive lands which were once under cultivation. The importance of opening up such a valley cannot be overestimated in the interests of the population of Upper Burma living in the dry belt round about Mandalay. I am told, Sir, that all along this route, especially in the Assam side, there is a good field for the mining industry. The Hukong Valley is favourably situated for the cultivation of very valuable crops like paddy, besides offering considerable facilities for the cultivation of rubber, tea and other valuable crops. The railway systems in Upper Burma and in Assam, owing to geographical position, at present are not paying well. If the two lines are connected, this disadvantage due to the geographical position would disappear, and the new line forming the connecting link would pay for the investment required by increasing the earnings of both the Burma and Assam Bengal Railways. This is the second ground on which I would urge the construction of this line. But the most important consideration which I would submit to the House is this. If Burma is to remain a part of British India, it is necessary that there should be free intercourse between the peoples inhabiting different provinces. The railway has been the main factor in promoting this intercourse between various provinces in India, and I do not see why Burma, which is a part of British India, should be practically segregated. The Burmese as a class do not like sea voyages and the construction of a railway line would remove one of the stumbling blocks in the way of a better understanding between Burma and the rest of India. I believe that the principle applied in undertaking railway construction is this : if the line is likely to pay a certain percentage of income or if the Local Government concerned is prepared to guarantee against loss, the construction of a new line is undertaken ; otherwise not. I submit, in the first place, that the railway along the Hukong Valley route would pay and in the second place, even assuming for argument's sake that the line is considered not paying, the ordinary rule that the Local Government concerned ought to guarantee against loss cannot apply in the case of a line like this where two provinces are concerned. It is a case of inter-provincial connection ; and in such a case it is but fit and proper that the Central Government ought to come in and ought to take the responsibility on itself, more especially as in this case there is the paramount necessity of opening up a fertile valley like the Hukong Valley. Our position is this that the Government of India are in possession of very valuable documents like the reports of the various surveys—especially the Hukong Valley survey ; and unless they produce these survey reports to show that the line or lines is or are not feasible or that the lines will not pay, I submit that I am entitled to draw the natural inference that the Hukong Valley line is a very feasible one and a paying line, and I challenge the Honourable the Commerce Secretary to show by reference to the report of the survey that the line is not

feasible nor profitable. I hope he will not confine himself to an assertion that the line will not pay or that it is not feasible.

I find, Sir, that the Government of India is pushing forward the Burma-Siam connection which is a much more difficult line, running through mangrove swamps and uninhabited jungles and involving the construction of a tunnel, a mile and a quarter long through solid granite rock, added to which are the difficulties of bridging several creeks on the way. This international connection is preferred to the interprovincial connection, though the first 123 miles alone in this line is likely to result in an annual loss of 11½ lakhs of rupees. I am not aware, Sir, if they insisted upon this guarantee before they thought of pushing through this connection with Siam. The alternative route from Chittagong to Akyab and from Akyab to Pakokku through the An Pass is, I believe, not an easy one owing to its physical features on the west coast of Burma, and if you come to Pakokku, there is a further difficulty of bridging the Irrawaddy across to Minhla. As the bridge at Sagaing has been decided upon, it is undesirable to undertake a second bridge on the Irrawaddy.

I submit, Sir, I have made out a case for the railway connection between India and Burma, and if the Government think that the alternative service and not the Hukong Valley route offers a better field for railway construction, it is desirable that one or the other lines of construction should be immediately undertaken. What I want, Sir, is this. From time to time we are told that the Government have considered it desirable that there should be a connection between India and Burma, and in every railway budget speech we find that some sort of regret is expressed that it has not been possible for them to undertake this construction; and some hopes are also held out by telling us that some line or other from Pyinmana to Lewu or Lewu to Taungdwingyi is possibly the connecting link between Burma and India. But I do not find any consolation in these distant hopes unless the Government of India come forward with a definite programme to connect India with Burma. Sir, my request is a very modest one as contained in this Resolution. I only want that some line of construction should be undertaken definitely as a part of the Indo-Burma connection, and I hope that they will not relegate to the background the scheme but that they will push it through.

Sir, it is not desirable with the limited knowledge at my command to deal more exhaustively with this Resolution, and I hope, Sir, the Honourable the Commerce Secretary would deal with this Resolution in that spirit of fairness which always characterises his dealings with problems of this nature, and I hope he would take the House into his confidence by showing any difficulty, if there is really any, with regard to carrying out the expert surveys which have been undertaken at great cost. With these words, I commend the Resolution for the acceptance of the House.

THE HONOURABLE THE PRESIDENT: Resolution moved:

"That this Council recommends to the Governor General in Council that railway construction be started during the year 1928-29 for connecting Burma with India by rail, and that necessary steps be taken forthwith."

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary): Sir, my Honourable friend Mr. Chari has raised a very interesting question to-day, not only economically but also perhaps psychologically. As he has said

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connection between India and Burma is at present restricted for all practical purposes to communications by sea. I have no doubt that my Honourable friend, Sir John Bell, would tell us that the services provided are comfortable, efficient, expeditious and cheap. (*An Honourable Member.* "Not cheap".) I said he would tell us it was cheap. Unfortunately, the Bay of Bengal can be rather rough especially in the monsoon, and my Honourable friend Mr. Chari has quite recently crossed the Bay of Bengal in order to attend the monsoon Session of this Council.

**THE HONOURABLE MR. P. C. DESIKA CHARI :** I had a very bad experience.

**THE HONOURABLE SIR GEOFFREY CORBETT :** That confirms my view of the psychological aspect of this case. I may say, Sir, that when I have had a rough crossing from Calais to Dover, I become for the time being a passionate adherent of the Channel Tunnel scheme. But apart from that, it is really rather a serious thing, as my Honourable friend has said, that this great province of the Indian Empire should be cut off from the rest of India and should be practically inaccessible by land from the rest of India. And as he very truly said, in the war it became a very serious problem, and though the war is over, we cannot expect to be exempt from wars altogether for the future.

I should very much like the Honourable Mover suggested, to take the House into complete confidence in this matter, but the subject really is one more for a lecture room than for a debate. I have got a map with me, and if any Honourable Member likes afterwards to go through the map with me, I can show him exactly how the thing stands, what the possible projects are and where the difficulties arise. I do not think it is possible to do that in a debate. However, I will make the best job of it I can. Well, various surveys have been made of a railway from Burma to India, but the practical projects can really be reduced to two. There is first of all what is known as the coast route, running from Chittagong down to Akyab and crossing the Yoma Hills by the An Pass down to the Irrawady Valley. That is one route which links up with the Burma Railways. The other one, to which the Honourable Mr. Chari has referred, is the Hukong Valley route which links up with the extreme north-east corner of Assam. It crosses the hills, descends the Hukong Valley and hits the extreme north of the present Burma Railways not very far from Myitkyna. Well, Sir, subject to correction by my friend Mr. Chari, I do think that, merely as a through connection between India and Burma, the Akyab or the coast route is the only route that can be seriously considered. The time taken on that route would be 56 hours by the fastest possible train, and I think Sir John Bell's mail steamers would beat us every time. Am I correct? Is it two days?

**THE HONOURABLE SIR JOHN BELL (Bengal Chamber of Commerce) :** It is 49 hours.

**THE HONOURABLE SIR GEOFFREY CORBETT :** I thought so. Well, the northern route is really an enormous detour from the populous centres of Burma to the populous centres of India. In fact, it is almost as if my friend proposed to come to Simla *via* Tibet; and until he becomes an enthusiastic

aviator, I do not think he will do that. It is a fact that the point of junction between the Burma Railway and the Assam Railway by Margherita would be within a short distance of the Tibetan frontier.

Now, to turn to the details of these projects, the southern route, the coast route, involves 578 miles of new construction, from Chittagong to the Burma Railway, and the cost would be Rs. 10 crores. As my Honourable friend Mr. Chari has said, one of the great difficulties is to cross the Yoma Hills; and on the An Pass, which is the best route that has been discovered, there would be a very long tunnel, nearly two miles, which would cost a great deal of money to construct. I do not think it would be a remunerative project merely as a through connection between India and Burma. My Honourable friend Mr. Chari is possibly aware—if not, my friend Sir John Bell will tell him—that it is really not possible for land communications to compete with sea transport. The sea is cheaper every time. And therefore merely as a means of through communication, as a commercial proposition it is not good enough. As a through communication it would only be justified, not from the point of view Mr. Chari spoke of, but in time of war or from the more subtle social point of view, to encourage Burmans to visit India a little more. But although the scheme as a whole would not be remunerative simply as a through connection, we have reason to believe that some of the local sections would be remunerative. In particular, the line from Chittagong to Akyab is probably remunerative, and it is not unlikely that it may be constructed at a not very late date; and that will cut off 210 miles of the total length of the through connection. We have already undertaken the construction of a short length of 13 miles from Chittagong to Fatikchhari, which will be the take-off at the Halda river for a line running southward along the coast to Akyab. On the other side of the Yoma Hills, in the Valley of the Irrawaddy, we have now undertaken the construction of a line from the main Burma Railway down to the river, where in all probability we shall provide for a train-ferry and then run north through Minbu to Pakokku. That will get over the difficulty of crossing the Irrawaddy, to which Mr. Chari referred, for the Irrawaddy would have to be bridged, or rather a train-ferry would be provided, for the purpose of this Minbu line. That would give us a very good take-off on the Burma side of the Yoma Hills. And with these two local extensions on each side of the Yoma Hills, the construction of the link uniting them would become a matter for practical consideration, so as to complete the connection between India and Burma. I may mention, however, that the final link between Akyab and the Pakokku Railway would still be 210 miles and the cost is estimated at 5½ crores.

We turn now to the northern route which, as I said, can hardly be considered merely as a through connection to India. We do not want to go from Rangoon to Calcutta *via* Pekin! The Burma Government have very recently put forward a proposal, for rather special reasons connected with recent happenings in the Hukong Valley, for extending the railway up to Hukong Valley from near Myitkyina for 112 miles. The total length of the connection between the Assam Railway and the Burma Railway is 278 miles of construction, and the estimated cost according to the survey which was made in 1921 was 7½ crores. It would probably be reduced somewhat now owing to the fall in prices. Well, this railway extension which the Burma Government proposed up to the Hukong Valley, and which would effect what would seem to be

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the primary object of Mr. Chari, that is the opening up and development of the fertile Hukong Valley, would cost 164 lakhs. And the final section, from the top of the Hukong Valley over the hills at the end, which would again require a very long tunnel, would be 166 miles and would cost 440 lakhs.

THE HONOURABLE MR. P. C. DESIKA CHARI : May I know the length of the tunnel ? A few hundred feet or so ?

THE HONOURABLE SIR GEOFFREY CORBETT : 3,500 feet. That is the longest tunnel. And there are two other tunnels besides. But the total cost of linking up the head of the Hukong Valley with the head of the Assam Railway would still be 4½ crores. As I said before, the final link on the southern route would cost 5½ crores. It would cost a crore more ; and I do not think, from the commercial point of view, there is any doubt that it would be more likely to be remunerative.

Well, the general conclusion to which I think the House will come, is that there is no case now for constructing a through connection as such. It would not be commercially remunerative, and we simply could not put up 10 crores for the Akyab line or 7½ crores for the Hukong connection merely to link up Burma and India and to save Honourable Members and others from the distress of a voyage through the Bay of Bengal in the monsoon.

THE HONOURABLE MR. P. C. DESIKA CHARI : That is not the only reason.

THE HONOURABLE SIR GEOFFREY CORBETT : But the local extensions will be taken up as they are found to be remunerative. We always have it in mind. We shall keep pushing along, and I have no doubt that when the extensions come close to each other, the final link will be completed. I hope, therefore, the Honourable Member will take what I have said as being in the spirit of what he asked. That is, not that we should put up 10 crores next year to make this connection, but that we should push on with the local schemes as we can, on a financially sound basis, until finally the gap is closed and the connection is completed.

THE HONOURABLE MR. P. C. DESIKA CHARI : Sir, I am afraid the Honourable Sir Geoffrey Corbett made light of my anxiety to have the Hukong Valley route. He knows there is a route *via* Pekin from Rangoon to Calcutta. My object is this. For people living along the coast they have got easier communication by sea. My object is to help people in the interior—take for instance people living at Myitkyina. Myitkyina is nearly 800 miles from Rangoon and Myitkyina and other districts have got a large and growing population and when people from these parts want to come to any portion of India they will have to travel 800 miles, come to Rangoon and then take a steamer. Whereas people living in Lower Burma and living all along the coast have got the other alternative of taking to steamships which are fairly comfortable. I do not complain against the steamship companies though the deck passengers may have very much to complain of. Sir, it is not because I think there would be a great saving of time, I urge this, but because the main bulk of the people living in the interior of Burma are put to considerable inconvenience, even if the other route is sanctioned. I have no objection if

at least the other alternative route, the coastal route, is sanctioned; it will be something. People may have some work in Rangoon or they may prefer to travel all over the place before going to Rangoon to take this railway through communication. But anyhow what I submit, Sir, is that the Railway Board and the Government of India ought to have a clear-cut programme for the Indo-Burma connection. It does not matter that the line to Burma takes a considerable time to finish. I do not mind whether it is the Hukong Valley route, which according to me has obvious advantages, or any other. If they prefer the other route, well and good. What I submit is that instead of saying that some lines may possibly be a link in the Indo-Burma connection, let them have a programme and start with that programme of construction as early as possible, and I would request that this Resolution may be kept in mind when new railway projects are being sanctioned in the province of Burma.

With these words, Sir, I submit it is practically admitted that it is desirable to connect Burma with India and under these circumstances I press the Resolution, and, though I am the sole member from Burma, I think I have the right to urge upon the House to regard it as a first-rate Indian national problem and I would request all the Members present to support this Resolution.

THE HONOURABLE SIR GEOFFREY CORBETT : Sir, I am prepared to admit that it is desirable that Burma and India should be connected by railway. And I am prepared to say that in pushing forward our local extensions, we shall always bear in mind the possibility of completing the link and we shall shape our programme accordingly. But I am not prepared to agree to recommend to the Governor General in Council that railway construction be started during the budget year 1928-29 for connecting Burma with India by rail and that necessary steps be taken forthwith; and I must therefore oppose the Resolution.

THE HONOURABLE THE PRESIDENT : The question is :

"That the following Resolution be adopted, namely :—

'That this Council recommends to the Governor General in Council that railway construction be started during the budget year 1928-29 for connecting Burma with India by rail, and that necessary steps be taken forthwith.'"

The motion was negatived.

#### INDIAN LIMITATION (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member) : Sir, I move that the Bill further to amend the Indian Limitation Act, 1908, as reported by the Select Committee, be circulated for the purpose of eliciting opinion thereon.

The Select Committee have altered the Bill as introduced in certain important particulars, and they have recommended that this Bill should be circulated for the purpose of eliciting opinion, and I move accordingly.

The motion was adopted.

#### CANTONMENTS (AMENDMENT) BILL.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : Sir, I move that the Bill further to amend the Cantonments Act, 1924, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

[H. E. the Commander-in-Chief.]

The proposed amendments are explained in detail in the Statement of Objects and Reasons. They are, with perhaps one exception, of minor importance. Some of them are intended to clarify the language of the Act, others to remove inconsistencies, and others again to bring the provisions of the Act more into line with the existing municipal law.

Clause 2 of the Bill contains a purely verbal amendment which requires no comment.

Clause 3 deals with a subject to which attention has been drawn more than once in this House. It is a statutory duty of a Vice-President, as the name implies, to preside in the absence of the President. But section 20 of the Act lays down that the President of a Cantonment Board must be the Officer Commanding the Station ; and under military practice there is always an Officer Commanding the Station present in the station. If the permanent Commanding Officer goes away, for however short a time, the next senior officer takes his place, and automatically becomes the Commanding Officer of the Station and the President of the Cantonment Board. The result is that no Vice-President can ever preside at a meeting of the Cantonment Board unless the President deliberately stays away from the meeting to enable him to do so. Clause 3 proposes to remove this anomaly, and enable the Vice-President, on occasion, to preside at meetings of the Board.

Clauses 4 and 5 propose to empower Local Governments to remove members of Cantonment Boards who have, since their election, become subject to any disqualification, which if it existed at the time of their election would have rendered them ineligible for election. This also is in accordance with municipal law.

Clause 6 proposes to assimilate the powers of Local Governments of imposing taxation in cantonments with their existing powers of imposing taxation in municipalities.

Other clauses are intended to improve the phraseology of certain sections of the Act which deal with property tax.

Clause 12 proposes to enable Cantonment Boards to invest their funds in fixed deposits with banks other than the Imperial Bank. Formerly Cantonment Board funds vested in the Crown and merged in Government balances. They could therefore be invested in fixed deposit with the Imperial Bank only. Cantonment funds now vest in, and are managed by, the Cantonment Authority, and there is no reason why Cantonment Authorities should not be able to deposit their funds with other banks subject to the approval of the Local Government.

Sir, I move.

The motion was adopted.

Clauses 2 to 13 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

## INDIAN EMIGRATION (AMENDMENT) BILL.

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH** (Education, Health and Lands Member) : Sir, I move that the Bill to amend the Indian Emigration Act, 1922, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

Honourable Members will remember that on Thursday last they adopted on my motion a Resolution recommending to the Governor General in Council that he should ratify the draft Convention and accept the Recommendation of the International Labour Conference passed at its Eighth Session held at Geneva concerning respectively the simplification of the inspection of emigrants on board ship and the protection of emigrant women and girls on board ship. In the course of my remarks while speaking on that Resolution, I stated that if the House adopted the Resolution which I then moved, it was proposed to undertake the necessary legislation during this Session to amend the Indian Emigration Act, VII of 1922, so as to enable the Governor General in Council to carry out such or all of the provisions of the Convention as circumstances may require. This Bill, Sir, is in conformity with the promise then made.

Article 11 of the Convention requires that each member which ratifies this Convention agrees to bring the provisions of Articles 1, 2, 3, 4, 5, 6 and 7 into operation not later than the 1st of January 1928, and to take such action as may be necessary to make these provisions effective. Article 1 enjoins that for the purposes of the application of this Convention, the terms "emigrant vessel" and "emigrant" shall be defined for each country by the competent authority in that country. As regards the definition of "emigrant vessel" and "emigrant" which we are called upon to lay down by legislation, I may invite the attention of the House to the fact that the definition of "emigrant" already exists in section 2 (1) (b) of the Indian Emigration Act, VII of 1922. All that we are now called upon to do therefore is to define "emigrant vessel", and that has been attempted to be done by the Bill now under consideration.

Furthermore, section 24 (2) (k) of the said Act empowers the Governor General in Council to make rules regarding the security, well-being and protection of emigrants both up to the date of their departure from India and on their return to India. But it does not confer any power on the Governor General in Council to make provision for similar purposes during the voyage, a provision which is necessary to give effect to the provisions of Articles 3 to 7 of this Convention which I have quoted already, and the Bill under consideration makes provision for such purposes as well. I therefore move it.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.



## INDIAN INCOME-TAX (AMENDMENT) BILL

**THE HONOURABLE MR. A. E. L. BAXTER (Finance Secretary):** Sir, I move that the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

Sir, the House will remember that when I introduced the Budget, last Delhi Session, one of the measures regarding taxation was the abolition of the export duty on tea. I then stated also that it was the intention of the Government to make up part of the loss on the export duty by raising from 25 to 50 per cent. the proportion of the profits of tea companies which are liable to income-tax as 25 per cent. seemed to be unnecessarily generous to some at any rate of the tea companies. There was an existing rule issued under the Income-tax Act which fixed the percentage at 25, and when it was proposed to raise that percentage to 50, some doubt arose in the course of the discussions whether the rule as it then stood was *intra vires* of the Act because it laid down that in all circumstances 25 per cent. of the tea companies' profits must be treated as non-agricultural and therefore assessable to income-tax. Now, under the Income-tax Act agricultural income is not assessable. But the effect of the rule in question might be in some cases, though very unlikely, to transgress this principle. These doubts having arisen, the Central Board of Revenue entered into negotiations with the tea companies. It was Government's first intention to institute a method by which the actual proportion of non-agricultural income should be definitely ascertained by the Income-tax authorities in each individual case. But it was realised that this process would prove to be extremely cumbersome and inconvenient, and it is indeed at the request of the tax-payers themselves, i.e., the tea companies, that the Government now propose that this small change be made in the Act in order that Government may be able to re-introduce a rule which will be without any doubt *intra vires* of the Act and enable them to fix a definite percentage.

At the same time, while this particular case was under consideration a doubt arose as to the rules which made similar arrangements in regard to one or two other kinds of assessment. The purpose of this Bill is to remove a defect in the Act and to exclude all doubts as to the validity of certain rules which exist for the convenience of the tax-payer, and the Bill is the result of the demands of the tax-payers themselves. If Government had been able to do so they would have much preferred to introduce a Bill laying down here and now exact percentages, but they need more experience in the case of tea companies and other cases before this can be done. When this experience has been gained from the working of the present amendment, I can assure the House that Government will try to put the matter on a much more satisfactory footing by introducing legislation fixing definite percentages; but at present it is not possible to say what would be the correct figure in some of the cases in question.

Sir, I move that the Bill, as passed by the Legislative Assembly, be taken into consideration.

The motion was adopted.

**THE HONOURABLE THE PRESIDENT:** The question is:

"That clause 2 do stand part of the Bill."

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN (North-West Frontier Province: Nominated Non-Official): Sir, I beg to move the amendment standing in my name, namely:

"That sub-section (3) proposed to be inserted in the Indian Income-tax Act, 1922, by sub-clause (1) of clause 2 of the Bill, after the words 'profits and gains' in clause (a), and after the words 'of the income' in clause (b), the words 'of tea companies' be inserted."

From the Statement of Objects and Reasons to the Income-tax (Amendment) Bill, it is intended to remove a slight defect in connection with the question of assessment of tea companies, but there appears to be no specification of the sort in the Bill in its present form. The absence of such a specification is open to certain apprehensions in the way of the general application of the Bill in case of its being passed into law. As such, I am afraid, it will be adding much to the powers of the Income-tax Department already exercised by them in making assessments to their liking. Instances are not wanting in which the Income-tax Department have not failed to make a full exercise of the powers provided in the Income-tax Act of 1922. They have been making assessments as it pleases them, irrespective of the particulars of income supplied by the assessee, and in certain cases no regard is had to the returns submitted by the assessee in accordance with the income-tax rules, and the assessments are made on the mere conjectures of the assessing authorities. In spite of the fact that a good many of the income-tax payers do not keep accounts similar to those of the shopkeepers, they are required to produce certain account books kept by persons of the said category, and in the absence of their producing such accounts, they are subjected to the assessments based on mere conjectures of the authorities. I think Honourable Members will agree with me in saying that every income-tax payer, and especially the agriculturist, cannot be expected to keep his accounts like the shopkeepers. In most of the cases it is not considered necessary to keep the accounts even owing to the smallness of business, particulars of which can be counted on the fingers. Under these circumstances, the compulsion to produce accounts as desired by the Income-tax authorities is largely due to the vast powers already provided for in the Income-tax Act.

Again, the assessee is granted no right of appeal against the order of the Income-tax Officer in any court except before the Assistant Commissioner of Income-tax, and finally before the Commissioner of Income-tax, with the usual result that the appeal or the revision against the order of the Income-tax Officer, as the case may be, is dismissed and the original order allowed to stand.

Under the circumstances, the passing of the Bill in its present form will be adding much to the powers already exercised by the Income-tax Department, who, I am afraid, will not hesitate to make a general application thereof, making no differentiation between the assessments of tea companies or of agriculturists. It seems necessary, therefore, that, with a view to safeguard against this general application of the Bill under discussion, it ought to be amended accordingly, so as to have it specified that it is simply intended for the tea companies and that its application should be confined to the assessments of such companies only.

THE HONOURABLE MR. A. F. L. BRAYNE: Sir, I can assure the House that Government have no sinister motive, or Machiavellian intention in bringing

[Mr. A. F. L. Brayne.]

forward this motion. My Honourable friend who has moved the amendment fears that if this Bill is passed, it will give the Income-tax Department very much stronger powers than they have at present. He thinks that the Bill is of general application to all forms of assessment. Now, the Bill merely refers to the classes of income shown in clause (a) of sub-section (2) of section 59 of the Indian Income-tax Act. Now, this section refers only to three classes of incomes, that is to say, income derived partly from agriculture and partly from business, secondly, income derived from insurance companies and, thirdly, income derived by persons residing outside British India. As I have stated, the object of the Bill is merely to validate certain rules which are meant for the convenience of assessing those classes and no other class. For example, there is absolutely no intention to assess agricultural income as such. Therefore, Sir, I oppose the motion.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, it seems to me that the Bill as it stands gives greater facilities for the convenience of Income-tax Officers, and I am afraid that with these additional powers, they are likely to use them to the great hardship of the assesseees. Sir, the present income-tax administration and the income-tax law is very unscientific, and it is not based upon the system which we have in England, and the Government have not thought fit to take any action on the recommendations of this House made during the last Delhi Session, that the income-tax law ought to be made more scientific and more in conformity with what we have in England. On the other hand, my main reason in moving that Resolution was that the Government ought not to be a judge in its own cause, and the department responsible for the assessment sits as a judge in its own cause ; and now the law is made so vague that it is quite possible for the assessing officer, who is a judge, as well as the party, to have his own rules without being guided by the ordinary rules of justice, equity and good conscience. Sir, if it is necessary in the case of tea companies to give certain powers to the assessing department, the House will have no objection to do so, but if under the guise of giving certain powers to the assessing department for this particular purpose you make the law very vague, I do not think you will be right in really enlarging the measure in a manner contemplated by the Legislature and which will cause great hardship. I therefore have great pleasure in supporting the motion moved by my friend Major Nawab Mahomed Akbar Khan.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab : Nominated Non-Official) : Sir, those who say that they are the good friends of the Zamindars cannot do anything but support the motion brought forward by my Honourable and gallant friend Major Nawab Muhammad Akbar Khan. As I have said on numerous occasions before, the zamindars are already very heavily taxed, and I do not think it will be in the interests of Government to drive them to become agitators. When the Honourable Mover of the Bill has already said that he does not mean to tax the zamindars, where is the harm if this little change is made ? It will make the law quite clear, and the income-tax authorities will not be able to oppress the people. We, Sir, who make these laws here, know the actual working of the laws outside this Chamber ; that is to say, we know how they are working outside the Chamber in actual practice, and so I think the Chamber ought to be very cautious so as not to put a wrong

weapon in the wrong hands. We are very grateful, Sir, to some of our English friends here, because whenever we have brought to their notice that we are being oppressed, they have always come to our rescue, and I hope to-day they will do the same. There are certain Honourable Members who are inclined to vote not according to what they think, but they vote in the way they are made to do on some occasions, but I would ask the House and the Honourable the Leader of the House to allow all Members to vote on this question as they think best, that is to say, every Honourable Member must have a free vote on this matter, so that the zamindars may be helped.

**THE HONOURABLE THE PRESIDENT:** The original question was :

“ That clause 2 do stand part of the Bill.”

Since which an amendment has been moved :

“ That in sub-section (3) proposed to be inserted in the Indian Income-tax Act, 1922, by sub-clause (1) of clause 2 of the Bill, after the words ‘ profits and gains’ in clause (a) and after the words ‘ of the income’ in clause (b), the words ‘ of tea companies’ be inserted.”

The question is that that amendment be made.

12 NOV.

The Council divided :

AYES—14.

Akbar Khan, the Honourable Major Nawab Mahomed.	Ray Chaudhury, The Honourable Mr. Kumar Sankar.
Charanjit Singh, The Honourable Sardar.	Sett, The Honourable Rai Bahadur Nalini-nath.
Desika Chari, The Honourable Mr. P. C.	Singh, The Honourable Raja Sir Harnam.
Govind Das, The Honourable Seth.	Sinha, The Honourable Mr. Anugraha Narayan.
Khaparde, The Honourable Mr. G. S.	Umar Hayat Khan, The Honourable Colonel Nawab Sir.
Mukherjee, The Honourable Srijut Lokenath.	Zubair, The Honourable Shah Muhammad.
Oberoi, The Honourable Sardar Shivdev Singh.	
Rama Rau, The Honourable Rao Sahib Dr. U.	

NOES—17.

Akram Husain Bahadur, The Honourable Prince A. M. M.	Misra, The Honourable Pandit Shyam Bihari.
Berthoud, The Honourable Mr. E. H.	Muhammad Buzlullah, The Honourable Khan Bahadur.
Brayne, The Honourable Mr. A. F. L.	Natesan, The Honourable Mr. G. A.
Corbett, The Honourable Sir Geoffrey.	Stow, The Honourable Mr. A. M.
Das, The Honourable Mr. S. R.	Swan, The Honourable Mr. J. A. L.
Habibullah, The Honourable Khan Bahadur Sir Muhammad, Sahib Bahadur.	Tek Chand, The Honourable Diwan.
Haig, The Honourable Mr. H. G.	Thompson, The Honourable Sir Jehn Perronet.
Hooton, The Honourable Major-General Alfred.	Tudor-Owen, The Honourable Mr. W. C.
McWatters, The Honourable Mr. A. C.	

The motion was negatived.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. F. L. BRAYNE: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

### HINDU FAMILY TRANSACTIONS BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill to provide that partitions and separations of interest among the members of Hindu undivided families and other transactions among persons governed by Hindu Law shall, in certain cases, be effected by written and registered instruments, as reported by the Select Committee, be taken into consideration.

The House will remember this Bill was introduced with a view to provide that certain Hindu family transactions, such as partitions and separations of interest and other matters, could only be effected by written and registered instruments. The Select Committee were in fact unanimous as to the principles of the Bill but, as the House will observe from the Minutes of Dissent by three of the Members, they seem to apprehend that the Bill has not given effect to some of the principles agreed to by the Select Committee. I do not think myself that there is any reason for that apprehension. I think the Bill covers the point made by the dissenting members of the Select Committee.

I move that the Bill be taken into consideration.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma: General): Sir, I move the amendment which stands in my name:

"That the consideration of the Bill be adjourned to the next Session of the Council of State."

I would not like to rush this piece of legislation, the principles of which do not seem to get general acceptance. Sir, the Select Committee has pointed out that:

"considerable hardship would be caused to the Hindu community by a provision which precluded the acquisition of separate status by conduct other than the execution of an instrument evidencing an intention to acquire it."

Sir, I do not think it is necessary for me to refer at length to the various ways in which a partition can be effected. Sir, according to the objects and reasons of this Bill, it is intended to lay down a certain legal formality to be observed for particular partitions and separations of status in a joint Hindu family, but I find the Bill, as drafted after the Select Committee's Report was signed does not bear out the full intention of the Select Committee. In fact, the Bill as it stands, I am afraid, brings within its scope those transactions which were originally not intended to be affected by it according to the Statement of Objects and Reasons. Sir, I find considerable support in the Minute of Dissent which has been jointly signed by my friend Sir Mammohandas Ramji and the Honourable Mr. Ramadas Pantulu. They say, Sir:

"I feel that the intention of the Committee to exclude from the operations of the Bill transactions whereby a family can become divided in status, such as conduct, partial

alienations of joint interest by one or more members of a coparcenary, business transactions between the coparceners, and so forth, has not been given effect to by the Bill even as amended. The right to become partially divided, either in respect of the members of the coparcenary or in respect of coparcenary property, leaving the family joint in respect of the other members and the undivided property is now recognised by the decisions. It is desirable to insert a proviso to clause 2 to make the intention of the Committee clear in respect of these matters."

With this object I sent in also certain amendments, but I think it is better that in the original Bill itself rather than in the form of provisos at a later stage, it should be made clear that no other transactions except written agreements of partition should be registered, and that it is not considered compulsory that a man may get a certain status that he should always execute some document which is to be registered. In the proviso to clause 2 I find certain transactions which are maintained as exceptions in the proviso which are accepted. I find, Sir, that this Bill deals with a change in the substantive right and not a procedure of law, and that is that the substantive rights of the members of undivided Hindu families should not be lightly changed unless there is some good reason to do so. Sir, there is no object in hasty legislation and my object in bringing forward this motion is merely to give the Government draftsman time to consider all this and to draft the clauses in such a way as to bring out the intentions of the Select Committee rather than leave it to the halfhearted attempts of amendments which we can bring forward.

This is a very important measure affecting the bulk of the Hindus. After all, there is no object gained in getting this measure passed to-day. It cannot go to the Assembly during this Session. If it is taken up at about the beginning of the next Delhi Session, there will be ample time to have it passed during that Session, and nothing is lost. I think the Honourable the Law Member, who is always considerate when a request of this kind is made, would accede to my request and would not press this piece of legislation in a hurry. With these few words, Sir, I commend my motion to the acceptance of the House.

THE HONOURABLE MR. S. R. DAS : Sir, as I said when I moved the motion, I do not think there is anything in the apprehension expressed by my Honourable friend or by the members of the Select Committee, but I am prepared to accept this amendment on three grounds. The first is that even if this Bill is passed now, there is no chance whatever of our being able to place it before the other House till the Delhi Session; the second is, we are very anxious from the point of view of the Government that this Bill should not be passed practically on the last day of the Session when many of the Members, particularly those who have appended dissenting minutes, are absent, and the third ground is one which my Honourable friend has not noticed, namely, that under the Standing Orders, he can, if he likes, refuse to consider the Bill without 7 days' notice which I am not in a position to give.

THE HONOURABLE MR. P. C. DASIKHA CHARI : We do not want to raise technical objections, Sir.

THE HONOURABLE THE PRESIDENT : The original question was :

"That the Bill to provide that partitions and separations of interest among the members of Hindu undivided families and other transactions among persons governed by Hindu law shall, in certain cases, be effected by written and registered instruments, as reported by the Select Committee, be taken into consideration."

[The President.]

Since which the following amendment has been moved :

“ That the consideration of the Bill be adjourned till the Delhi Session.”

The question I have to put is :

“ That the consideration of the Bill be adjourned till the Delhi Session.”

The motion was adopted.

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### APPOINTMENT OF A COMMITTEE TO CONSIDER THE QUESTION OF RESIDENCE AND ACCOMMODATION FOR MEMBERS OF THE INDIAN LEGISLATURE.

THE HONOURABLE MR. A. C. McWATTERS: (Industries and Labour Secretary): Sir, I beg to move :

“ That the Honourable the President do appoint four members of this House to serve on a Committee to consider the question of residence and accommodation for Members of the Indian Legislature, including the use and disposal of the Western Hostel, New Delhi, and the question of constituting a Standing House Committee to deal with all matters connected with the allotment to Members of accommodation or quarters available for their residence. The Committee will also comprise six members of the Legislative Assembly.”

I think, Sir, that this Resolution hardly requires many words of commendation from me. The main object of the Resolution is an entirely reasonable and laudable one on the part of Government that Members of the Legislature themselves should be given a voice in questions connected with their accommodation and residence, and both from the point of view of Government and of the Legislature, it is extremely desirable that any grievances or disabilities that come to light should be expressed clearly by the persons who are affected by them. That is the main object of Government in putting forward this Resolution. But there was a more particular reason why they desired to put it forward at the present time and that is connected with the question of hotel accommodation in New Delhi. As New Delhi develops, the time is rapidly coming when it is important that there should be a good hotel in the new City, and we have found that it is impossible to induce any hotel companies to come forward with proposals for establishing a hotel in New Delhi so long as Government continue attempting to run a hotel of their own in the shape of the Western Hostel. We endeavoured to get competition on the part of hotel companies for taking up sites in New Delhi on favourable terms, but without success. We negotiated with a certain hotel company for taking over the Western Hostel and these negotiations promise, I think, to bear fruit. But the Government were of opinion that as any negotiation of that kind would involve as one of its essential elements the question of reserving a certain amount of accommodation at the Western Hostel for Members of the Legislature, it was most important that Members of the Legislature should be cognizant of those negotiations and should in fact advise Government upon them. That was the main reason for putting forward this Resolution at the present time.

There is one further point. The House will observe that in the other place the original Resolution of Government was added to and the question of considering the appointment of a House Committee was also referred to this

*ad hoc* Committee which is now to be formed. The House may know that during the first Session of the Legislature a House Committee was formed, but I believe I am right in saying that that Committee never functioned. We see no reason why this scheme for a House Committee, which operates successfully in other countries, I believe, should not be resuscitated, and therefore, we are quite agreeable to leave this question also, namely, the formation of a House Committee and its functions to be considered by the *ad hoc* Committee whose formation I am now proposing. I therefore, with these few words, Sir, commend this Resolution for the acceptance of the House.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab: Nominated Non-Official): Sir, you have very kindly always told us that you will help to maintain the dignity of this House in every way. I hope, that at this juncture the Leader of the House will also come to our assistance. What I want to put before the House is that either the number of Members from our Council should be raised to 6 or the number of Assembly Members should be reduced to 4, because, if this is not done, the Assembly Members will get 6 votes and we shall have only 4. If we are out-voted we shall not have this House of much use at all. We are absolutely equal to the Assembly in every respect. If they pass a thing and we do not pass it, it cannot be considered as passed in the Legislature. If we are made inferior to the Assembly in such matters as the present, I think there is no Member of this House who will agree to it. (*An Honourable Member*: "Question"). I ask all the Members here and yourself, Sir, to help us in this matter, and make the number 6 instead of 4. If you cannot do anything with the other House in the way of cutting their number down by 2, perhaps you can send 6 from here so as to equalise the number, and I think this is a very reasonable request and I hope you will help the House.

THE HONOURABLE THE PRESIDENT: The Honourable Member has asked me to help the House. The only way in which I can help the House is by putting to the House an amendment which might be moved but which has not been moved.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: You have always allowed a Member, in an emergency time like this, to move such an amendment. You have got that power and you can help us in that way. I move this amendment, Sir, that instead of the figure "4" the figure "6" be substituted.

THE HONOURABLE THE PRESIDENT: Amendment moved:

"That for the word 'four' the word 'six' be substituted.

THE HONOURABLE MR. A. C. McWATTERS: Sir, I think this is a point which perhaps I should have dealt with in moving the Motion in the first instance. The reason why Government are moving for four Members in this House instead of six as in the other is because there are very many more members in the other House who are affected by this question of accommodation than there are in this House, (*An Honourable Member*: "More than double")—more than in the proportion of 6 to 4. In fact this House is getting slightly more than its due share in this deal, having regard to the proportion of Members involved. The number of Members of the Assembly



[Mr. A. C. McWatters.]

involved in this question is much greater. Also it is not a question in which one House has divergent interests from the other House. There are certain classes of Members—orthodox, unorthodox and so on, who represent particular interests. It is not a question of the Assembly having one interest and the Council of State having another interest. I think with four Members nominated from this House we shall be able to get the different classes of interests represented, and therefore I hope the Honourable Member will not press his amendment; if he does, I am afraid I shall have to oppose it.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: I am afraid I have to press my amendment, Sir. If this sort of thing is allowed to happen in this matter it will happen in other matters also. It will be said afterwards "You did it once, why not always?" and if this is done always there is no use having this House at all. I am therefore, Sir, sorry that I have to press my amendment.

THE HONOURABLE THE PRESIDENT: The original question was:

"That the Honourable the President do appoint four Members of this House to serve on a Committee to consider the question of residence and accommodation for Members of the Indian Legislature, including the use and disposal of the Western Hostel, New Delhi, and the question of constituting a Standing House Committee to deal with all matters connected with the allotment to Members of accommodation or quarters available for their residence. The Committee will also comprise six members of the Legislative Assembly."

Since which an amendment has been moved:

"That for the word 'four' the word 'six' be substituted."

The question I have to put is that that amendment be made.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The question is:

"That the original motion be adopted."

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Tuesday, the 20th September, 1927.

## COUNCIL OF STATE.

*Tuesday, 20th September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### QUESTIONS AND ANSWERS.

**LACK OF RAILWAY COMMUNICATION WITH THE MAJOR PART OF THE ARAMBAGH SUB-DIVISION IN THE DISTRICT OF HOOGHLY.**

220. **THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI** (on behalf of the Honourable Srijut Lokenath Mukherjee): Will the Government be pleased to state whether it is a fact that there is no railway communication with the major part of the Arambagh sub-division in the district of Hooghly?

**THE HONOURABLE SIR GEOFFREY CORBETT:** No railway passes through the Arambagh Sub-Division.

### PROTECTION TO THE MATCH INDUSTRY.

221. **THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY:** Is it a fact that the Tariff Board was directed by Government to submit a report on the manner and measure of protection, if any, that might be afforded to the match industry in India? If so, how far has the inquiry by the Tariff Board proceeded, and when is it expected to submit its report; and is it a fact that the Tariff Board has postponed its investigation for an indefinite period of time? If so, why has this been done?

**THE HONOURABLE SIR GEOFFREY CORBETT:** A reference on the match industry was made to the Tariff Board last November. But the Board was then fully occupied with the Steel enquiry, and the enquiry into the match industry did not begin until March. The Board has taken evidence in Burma, and Assam, and also from the Indian Match Association. Progress has been interrupted by a number of other pending enquiries, which have now been completed or are approaching completion. It is expected that the report on the match industry will be submitted next April.

### MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

**SECRETARY OF THE COUNCIL:** Sir, the following message has been received from the Legislative Assembly:

"I am directed to inform you that the Legislative Assembly have, at their meeting held on the 19th September, 1927, agreed without any amendments to the following Bills which have been passed by the Council of State:

A Bill further to amend the Aden Civil and Criminal Justice Act, 1864, in order to make further provision for the jurisdiction thereunder of the High Court of Judicature at Bombay.

A Bill further to amend the Indian Divorce Act for a certain purpose.

A Bill further to amend the Assam Labour and Emigration Act, 1901, for certain purposes."

## BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL : Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table copies of a Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose, which was passed by the Legislative Assembly at its meeting held on the 19th September, 1927.

THE HONOURABLE SETH GOVIND DAS (Central Provinces : General) : I want to know, Sir, when this Bill is going to be taken up for consideration.

THE HONOURABLE THE PRESIDENT : That is a matter in which I have to ask the assistance of the House. The House knows that, unless the Chair otherwise directs, the Bill which has just been laid cannot be taken up for consideration within three days of its being laid on the table of the House. The House is aware that on some occasions we have taken up Bills the day after they have been laid in this House. I have been told that one or two Honourable Members are desirous of proceeding with the Bill at once. That is a thing which I think has never been done so far. But I am entirely in the hands of the House in this matter, and I shall be very glad to have the views, particularly of non-official Members, because I imagine it is a matter of little or no moment to Government or to the official Members when the Bill is taken up. I shall be very glad to hear the views of non-official Members.

THE HONOURABLE SETH GOVIND DAS : As far as I see, after the Bill is laid on the table, according to the Standing Orders, we should have seven days' time before the Bill is taken into consideration. . . .

THE HONOURABLE THE PRESIDENT : Three days.

THE HONOURABLE SETH GOVIND DAS : A slip of the tongue, Sir, yes, three days. On behalf of my party I would suggest that, because the Bill is of a very controversial nature, we should have at least three days before we take it up for consideration. Only the other day the Honourable Mr. Das himself withdrew a Bill in favour of the opinion of the House and he accepted its postponement to the next Session. If the House is not going to sit after three days, in that case I suggest that the consideration of this Bill should be postponed to the next Session ; but in any case it should not be immediately taken up for consideration as it is a very controversial Bill.

THE HONOURABLE THE PRESIDENT : Before I ask the views of other Honourable Members, I should like to be told by the Leader of the House if I am correct in supposing that copies of the Bill as amended by the Select Committee were circulated to the Honourable Members of this House at once, and also whether I am correct in supposing that one amendment only was made in the other House in the Bill which was reported to that House by the Select Committee.

THE HONOURABLE KHAN BAHADUR SIE MUHAMMAD HABIBULLAH (Leader of the House) : Sir, it is a fact that the Bill, as soon as it passed through the Select Committee was circulated to the Honourable Members of this House for information, and that the only amendment that was made in the other House is in regard to the question whether the offence should be bailable or non-bailable. Beyond that there was no other amendment whatsoever made by the other House. I may add that this Bill was circulated

among Honourable Members last evening as soon as it was passed in the other House. I am also glad to say that the Honourable Mr. Khaparde, who proposes a few amendments to this Bill, was good enough to circulate them in the course of last evening.

**THE HONOURABLE SETH GOVIND DAS :** That is all right, but still many other amendments were moved in the other House. Of course, they were not accepted—that is entirely a different matter. But it is a fact that certain Honourable Members of that House were of opinion that some more amendments ought to be made in the Bill; and Honourable Members here may also think it desirable to send such amendments as have been moved in the other House, though not passed. No doubt, as the Honourable the Leader of the House has pointed out, the Bill was circulated last evening as passed by the other place. The Select Committee's Report was also circulated, but we were watching the amendments that were going to be made by the other House. Though only one amendment was made, many amendments were moved in the other House. At least we should have some time to consider the Bill with the amendments which were moved in the other place. Therefore, I suggest again, Sir, that we should have at least three days' time according to the Standing Orders for considering the Bill and two days for sending in amendments.

**THE HONOURABLE PANDIT SHYAM BIHARI MISRA** (United Provinces : Nominated Official) : May I know, Sir, where my Honourable friend Seth Govind Das' party is ? It seems to me that the so-called party consists of himself and Mr. Zubair only to-day.

**THE HONOURABLE SETH GOVIND DAS :** Mr. Kumar Sankar Ray Chaudhury is here and Mr. Lokenath Mukherjee and Mr. Anugraha Narayan Sinha will also be here. Some other Members have not attended the Council to-day but they are likely to attend to-morrow. Some Members might attend in the course of the day. My party consists of course of many more Members than my Honourable friend Mr. Misra suggested. Besides the party may contain a few Members in this House, but we want to put the view of the country before the House which this party truly represents.

**THE HONOURABLE THE PRESIDENT :** I should be grateful for the views of other Honourable Members. So far I have only had the views of one Honourable Member representing what at least is a somewhat attenuated party in the House at the moment.

**THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN** (Punjab : Nominated Non-Official) : I think the other Members would necessarily like to finish the Session as soon as possible, because some of them are business men. Most of us have been going to the other House during the debates on this Bill and hearing what was going on. So everybody is quite prepared. There is no new preparation to be made and I think, if the Bill was brought forward, say immediately, or to-morrow, most of the Members would like that.

**THE HONOURABLE SETH GOVIND DAS :** Sir, I should like to know whether, when the House is not unanimous on the point and when a section of the House or any Member objects to taking the Bill into consideration before three days, it can be taken into consideration earlier than the three days allowed by the Standing Orders ?

**THE HONOURABLE THE PRESIDENT :** The Bill can certainly be taken into consideration earlier. The matter is entirely in the discretion of the Chair. The position of the Chair in this matter is that it has to consider the convenience of the House as a whole, and I think I should be right in saying that the House as a whole does not desire to wait for the full three days' notice in this matter. The House is already somewhat thin and I have no doubt that if we do not take this Bill up till Friday, the House will be considerably thinner. The Honourable Seth Govind Das and some members of his party may be here ; the official Members will be here, but it will hardly be a House properly constituted to take into consideration a Bill of this important character. The House has put me in a position of some difficulty, but as I say I have to consider the convenience of the House as a whole, and I think I shall be doing that if I direct that the Honourable Mr. Haig's motion come before this House to-morrow. The usual two days' notice under the Standing Orders for amendments will, of course, have to be waived by the Home Secretary.

**THE HONOURABLE SETH GOVIND DAS :** Up till what time could the amendments be sent in ? By this evening ?

**THE HONOURABLE THE PRESIDENT :** I can only suggest that the Honourable Member should send them in as soon as possible. As I said, it is obviously a matter in which the two days' notice for amendments cannot be insisted on. The Honourable Member will no doubt do his best to let the Honourable the Home Secretary have notice of his amendments as early as possible.

# RESOLUTION *RE* RATIFICATION OF THE DRAFT CONVENTIONS CONCERNING—(1) SEAMEN'S ARTICLES OF AGREEMENT, AND (2) THE REPATRIATION OF SEAMEN.

**THE HONOURABLE SIR GEOFFREY CORBETT** (Commerce Secretary) : Sir, I beg to move the following Resolution :

" That this Council recommends to the Governor General in Council that the question of the ratification of the Draft Conventions concerning—

- (1) Seamen's Articles of Agreement, and
- (2) the Repatriation of Seamen,

adopted by the General Conference of the International Labour Organisation of the League of Nations at its Ninth Session held at Geneva from the 7th to the 24th June 1926, should be considered at a later date, when the amendments necessary to bring the existing Law into conformity with these Draft Conventions have been further examined in consultation with parties interested."

Sir, these two Conventions were the outcome of the Ninth Session of the International Labour Conference which was held at Geneva last year. This Session considered exclusively questions relating to maritime labour, and India was represented with skill and distinction by a delegation which included a Member of this Council, namely, my Honourable friend Sir Arthur Froom. I may say at once that in the matters which are dealt with in these two Conventions, Indian law and procedure are already very advanced. In the articles of agreement which are prescribed for seamen, and in the matter of repatriation, I think we may fairly claim that the Indian Government is as solicitous

for the welfare and protection of seamen as the Government of any other country in the world. It follows, therefore that it should be possible for us to ratify these Conventions, which must already be largely covered by the existing law and practice in India. In fact, I think I may say that in some respects we already go considerably beyond the requirements of these Conventions. There are, however, a few minor points in the Conventions which are not so covered ; and the procedure of the League of Nations in these matters is usually this. In the first place, a Convention cannot be ratified with a reservation. You have to take it as it stands. And secondly, before you ratify, the League of Nations desires that you should make any amendment in the law that may be necessary in order to bring your law into strict accordance with the requirements of a Convention.

Now, in this matter, relating to the position of seamen under the Merchant Shipping Acts, the English and the Indian Acts are very closely interlocked. In particular, the part of the English Merchant Shipping Act relating to masters and seamen, that is Part II of the Act, applies to all British ships wherever they may be registered, except in certain restricted circumstances ; for instance, in certain cases, when the ship concerned is within the territorial jurisdiction of the country in which it is registered. Otherwise, the English Act is an Imperial Act, applying to the whole of His Majesty's possessions and governing the position of seamen on all British ships wherever they may be registered, in whatever part of His Majesty's dominions. Before therefore these conventions are applied to all ships registered in India and before we can ratify these Conventions, we have to be sure that the law governing these ships is in accordance with the Conventions.

That law, where it differs from the Conventions in certain small points, can only be brought into line with the Conventions by His Majesty's Government, acting through the Imperial Parliament. We have therefore to await the decision of His Majesty's Government on these small outstanding points before we can definitely decide to ratify.

There is also another point, I think. It is rather desirable that these Labour Conventions should be ratified simultaneously by as large a number of countries as possible. We have had a certain experience of that ourselves in regard to the Washington Conventions, which India ratified in advance of most other countries, and has suffered certain disabilities, as some think, in consequence. It is particularly desirable in Conventions relating to maritime labour, where seamen under the very conditions of their service are not confined to any particular country but proceed from one country to another. I think, therefore, we need be in no great hurry to ratify these Conventions, which are open to ratification at any time. At the same time, under Article 405 of the Treaty of Versailles, we are required to bring such Conventions before the Legislature within eighteen months of the Session at which they were agreed to. Eighteen months have now nearly expired, and will expire before the next Session of the Legislature. For this reason we have no option but to bring the Conventions before the Legislature at this Session and in this particular form. The Resolution was accepted yesterday by the Legislative Assembly, and I have no doubt that it will be accepted by this Council to-day.

Sir, I move.

The motion was adopted.

**RESOLUTION *RE* RECOMMENDATIONS CONCERNING (1) THE REPATRIATION OF MASTERS AND APPRENTICES, AND (2) THE GENERAL PRINCIPLES FOR THE INSPECTION OF THE CONDITIONS OF WORK OF SEAMEN.**

**THE HONOURABLE SIR GEOFFREY CORBETT** (Commerce Secretary):  
Sir, I beg to move the following Resolution :

"That this Council recommends to the Governor General in Council that no action be taken on the recommendations concerning—

(1) the Repatriation of Masters and Apprentices, and

(2) the General Principles for the Inspection of the Conditions of Work of Seamen,

adopted by the General Conference of the International Labour Organisation of the League of Nations at its Ninth Session held at Geneva from the 7th to the 24th June 1926, until the amendments necessary to bring the existing law into conformity with these Recommendations have been further examined in consultation with parties interested."

The position in respect of these recommendation is similar to the position in respect of the Conventions which were dealt with in the last Resolution. It differs merely in one point. I said that a Convention had to be ratified without reservation. There is no such condition attaching to the acceptance of a recommendation. It is open to the Government concerned to give effect to as much or as little as it likes. At the same time, where, as in this case, recommendations have been accepted by the delegation of the country concerned, it is obviously desirable that the Government of that country should give effect to as much as possible.

The first recommendation, dealing with the repatriation of masters and apprentices, is a small matter. I think the law in regard to masters already gives as much protection as is required to the masters. It regard to apprentices some amendment may be necessary. And here again His Majesty's Government are considering, I understand, an amendment to the English Merchant Shipping Act which will apply to all British ships wherever registered, and here again it is not within our power to legislate in the matter apart from His Majesty's Government. This is a small matter that can well stand over.

The second question, viz., the general principles for the inspection of the conditions of work of seamen is a matter which concerns India only, because the inspection will be confined to Indian ports. I do not think there is in contemplation any extension of inspection on board ship on the high seas. The most important article, the fundamental article as we may say, in this recommendation is article No. 3 :

"That, wherever it is compatible with the administrative practice and in order to secure the greatest possible uniformity in the enforcement of the laws and regulations relating to the conditions under which seamen work, the different services or bodies responsible for supervising the enforcement of such laws and regulations should be centralised under a single authority."

Now, that article is of considerable interest to us because, as Honourable Members are aware, we have already under consideration the reorganisation

RECOMMENDATIONS re REPATRIATION OF MASTERS AND APPRENTICES, AND 1285  
INSPECTION OF WORK OF SEAMEN.

of our mercantile marine administration so as to bring it under the central authority instead of having it scattered under the authority of the various Local Governments. When I brought the Indian Lighthouse Bill before this House in the Delhi Session, I said that this was the first instalment of a general scheme of centralisation. That Bill has now become law, and we shall now proceed with the next stage, which will be the amendment of the Indian Merchant Shipping Act so as to transfer the statutory authority from the Local Governments to the Governor General in Council. We hope to bring this Bill before the Legislature at the next Delhi Session, and that will be a fulfilment of the fundamental condition required by this recommendation. Until then, Sir, I think the question of acceptance of the recommendation can well be postponed.

The motion was adopted.

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The Council then adjourned till Eleven of the Clock on Wednesday, the 21st September, 1927.





## COUNCIL OF STATE.

*Wednesday, 21st September, 1927.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

### QUESTIONS AND ANSWERS.

#### APPOINTMENTS IN THE CIVIL MEDICAL DEPARTMENT, BENGAL.

222. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE: Will the Government be pleased to state whether it is a fact that the Secretary of State in Council has made certain rules to regulate appointments in the Medical Department in Bengal? If so, will the Government be pleased to lay on the table a copy of the rules referred to above?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH: The Honourable Member is presumably referring to the regulations framed by the Secretary of State in Council under Rule 12 of the Devolution Rules made under section 45-A of the Government of India Act. Under these regulations certain posts under Local Governments (including the Government of Bengal) are reserved for officers of the Indian Medical Service. The question of publishing these regulations is under consideration, and I regret that I cannot comply with the Honourable Member's request to place a copy of the regulations on the table.

#### APPOINTMENTS IN THE CIVIL MEDICAL DEPARTMENT, BENGAL.

223. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE: Will the Government be pleased to inform the Council whether it is a fact that in a letter, dated July 5th, 1923, or thereabouts, or in any other letter, the Government of India communicated to the then Ministry of Local Self-Government, Bengal, the manner in which appointments in the Medical Department in Bengal were to be made? If so, will the Government be pleased to lay on the table a copy of the letter referred to above?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH: The letter referred to by the Honourable Member was in the nature of a formal covering document with which the regulations framed by the Secretary of State were forwarded to Local Governments; it contained no instructions apart from those contained in the regulations framed by the Secretary of State for the reservation of certain appointments for the Indian Medical Service and for the protection of the existing rights of incumbents of non-reserved posts. I regret that I cannot lay a copy of the letter on the table.

#### APPOINTMENTS IN THE CIVIL MEDICAL DEPARTMENT, BENGAL.

224. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE: What effect, if any, has been given to the rules and instructions referred to in the two preceding questions?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :** So far as the Government of India are aware, full effect has been given to the regulations promulgated by the Secretary of State for India.

**APPOINTMENTS IN THE CIVIL MEDICAL DEPARTMENT, BENGAL.**

**225. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (i) Have cases occurred in which appointments were made otherwise than in accordance with the rules or instructions mentioned in the preceding questions ?

(ii) Do the Government contemplate taking action to see that the rules referred to above are carried out ?

**THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH :**

(i) The Government of India have no information on the subject.

(ii) As the Government of India are not aware that the regulations framed by the Secretary of State are not being observed by the Government of Bengal, the question of their taking any action does not arise.

**INCONVENIENCES CAUSED TO PASSENGERS AT CHIRIR BANDAR STATION ON THE PARBATIPUR-KATI HAR LINE OF THE EASTERN BENGAL RAILWAY.**

**226. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (a) Have the railway authorities received complaints to the following effect :

- (1) the passenger shed in Chirir Bandar station on the Parbatipur-Katihar line of the Eastern Bengal Railway is in a very bad condition ;
- (2) there is not a single bench on the platform for the use of intermediate and third class passengers at the said station ; and
- (3) there is no arrangement for the supply of drinking water at the said station ?

(b) Is it a fact that no action was taken on the complaints ?

(c) Do Government propose to take necessary steps for removing the grievances mentioned in the complaints ? If not, why not ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** The Government have no information. The questions relate to matters which are within the Agent's competence to deal with and might suitably be discussed by the Local Advisory Committee, but the Agent's attention is being drawn to them by sending him a copy of the questions and this reply.

**FORCIBLE ENTRY BY TWO SOLDIERS INTO A RESERVED SECOND CLASS COMPARTMENT IN THE 62 DOWN CALCUTTA MAIL AT DHARAMPORE ON THE KALKA-SIMLA RAILWAY.**

**227. THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (a) Is it a fact that, on Saturday, the 3rd September 1927, two soldiers of the Royal Artillery forcibly entered and took their seats in a reserved second class compartment in the 62 Down Calcutta Mail at Dharampore station on the Kalka-Simla-Railway ?

(b) Is it a fact that the gentleman, who had reserved the compartment, called the station master, Dharampore, and the guard to his rescue, but that they did not take any steps ?

(e) Did the two soldiers possess second class tickets or any tickets ?

(d) What action do Government propose to take in the matter ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** The Government have no information on the subject, but they are forwarding a copy of the question and this reply to the Agent, North Western Railway, who can be relied upon to take any action necessary in the case.

**RECEIPT BY THE RAILWAY BOARD OF A TELEGRAM FROM THE SECRETARY OF THE PRESS EMPLOYEES' ASSOCIATION, CALCUTTA.**

228. **THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (a) Will the Government be pleased to state if the Railway Board received a telegram, dated 22nd April 1927, from the Secretary of the Press Employees' Association, Calcutta ?

(b) If the answer to (a) be in the affirmative, will the Government be pleased to lay a copy of the said telegram on the table ?

(c) Will the Government be pleased to state what action, if any, was taken or is intended to be taken on the said telegram ?

**THE HONOURABLE SIR GEOFFREY CORBETT :** (a) Yes.

(b) A copy is laid on the table.

(c) The telegram was forwarded to the Agent, East Indian Railway, for disposal.

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**COPY OF TELEGRAM, DATED THE 22ND APRIL 1927, FROM THE SECRETARY, PRESS EMPLOYEES' ASSOCIATION, CALCUTTA.**

Oudh and Rohilkhand employees transferred Calcutta Howrah badly treated. Salaried compositors converted piece pledges broken invidious distinction previous petitions telegram ignored great discontent. Immediate intervention requested.

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**PROCEEDINGS AND RESOLUTIONS OF THE ALL-INDIA PRESS EMPLOYEES' CONFERENCE HELD IN CALCUTTA ON THE 13TH AND 14TH AUGUST, 1927.**

229. **THE HONOURABLE SRIJUT LOKENATH MUKHERJEE :** (a) Will the Government be pleased to state whether they have received a copy of the proceedings and resolutions of the All-India Press Employees' Conference, which was held in Calcutta on August 13th and 14th, 1927 ?

(b) If the answer to (a) be in the affirmative, will the Government be pleased to lay on the table a copy of the resolutions Nos. 8, 10, 20, 21, 25, 29 and 36, passed in the said Conference ?

(c) Will the Government be pleased to state whether they have taken any action on those resolutions ?

(d) If the answer to (c) be in the negative, will the Government be pleased to state what action, if any, they intend to take on those resolutions ?

(e) If the answer to (c) be in the affirmative, will the Government be pleased to inform the Council of the action they have taken on those resolutions ?

**THE HONOURABLE MR. A. C. McWATTERS:** Government received a copy of the resolutions passed by the All-India Press Employees' Conference. They do not propose to take any action on these resolutions. It is open to any employee in a Government of India Press to put forward a memorial in respect of any grievance and, as a matter of fact, memorials are constantly received and considered. It is also open to press employees to secure recognition for any trade union which conforms to the rules governing trade unions of Government servants, and to bring grievances to the notice of the proper authority by means of such trade unions. The Government of India are not prepared to accord consideration to grievances put forward by press workers through other channels. I do not think that any useful purpose will be served by laying these resolutions on the table, but I shall be glad to send a copy of the resolutions mentioned by the Honourable Member to him if he so desires.

### CRIMINAL LAW AMENDMENT BILL.

**THE HONOURABLE MR. H. G. HAIG (Home Secretary):** Sir, I beg to move that the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

The occasion for bringing this motion before the House is one which all Members of the House without exception must regret. For it arises out of, and draws attention to, the unfortunate state of feeling which prevails in the country between the two great religious communities of India, a state of feeling which is giving rise to the most deplorable outbreaks of passion between those two communities. Government do not suppose that by introducing any legislative measure they can produce that change of heart which is the only true solution for these troubles. The right note for dealing with these unfortunate dissensions was struck by His Excellency the Viceroy in that powerful appeal which he addressed recently to the people of India. But much as we may hope that that appeal will have the effect it deserves, it must be recognised that, in any event, it is necessary to supplement the feelings of the people by the machinery of the law. We can never dispense with the assistance that the law may give. Now, Sir, it is well known to all Members of this House that the prevalence of malicious writings is one of the main causes which keeps alive this constant irritation, and that possibly no other factor at the present moment inflames the minds of men more than these abominable writings which are published, I regret to say, on both sides. Most of these cases can be, and have been, dealt with under the provisions of section 153A of the Indian Penal Code, and it is not the case of Government that this legislation which is now brought forward for the consideration of the Council will effect any very great change in the situation. But it has been brought to their attention recently that there may be a small loophole through which some ingenious person might escape the punishment which he deserves; and that is a situation which Government do not think it is reasonable for them to permit to continue. Moreover, the principle of the Bill seems to the Government to be entirely justifiable. As I have said, the action hitherto taken against such writings has been taken under section 153A which provides punishment for those who promote or attempt to promote feelings of enmity or hatred between different classes of His Majesty's

subjects. There is, of course, no doubt that nothing at the present moment is more likely to promote such feelings of enmity or hatred than scurrilous attacks on religion. But after all, section 153A provides only an indirect way of dealing with these attacks, and in the view of Government there is no objection in principle to making these acts punishable directly and in themselves. I would merely mention that the principle of punishing directly offences against religion is already to be found very clearly inserted in Chapter XV of the Indian Penal Code. We are introducing therefore by this measure no new principle. In order to strengthen what may possibly be a weak point in the existing law, Government have thought it their duty to introduce this Bill, and I think I may claim that the reception of the Bill has been very decidedly favourable. Government did not expect that a Bill of this nature would not receive the most careful and close scrutiny, and it is only natural and proper that the Legislature should be reluctant to take any step that might be regarded as interfering with legitimate criticism or the free expression of honest opinion. Government drafted a section which in their opinion provided all the necessary safeguards, but they were anxious that the section should be carefully examined. They therefore welcomed the opportunity of referring the section for closer scrutiny to a Select Committee in the other House. That Select Committee, Sir, gave the matter their most careful attention, and they finally substituted for the original Government draft a form of words which, I think, it will be very difficult for any one to contend does not provide the most ample safeguards for honest writers. Indeed some might think that the section as drafted at present goes almost too far in the direction of providing safeguards. That point, Sir, has been carefully considered by the Government, and I wish to say that they have definitely accepted the redraft of the Select Committee.

What then is the criticism that has been directed against this Bill? The question in the other House has been considered on its merits. It has not been made a party question. I do not know whether the same practice will be followed in this House. Yesterday my Honourable friend Seth Govind Das referred to his Party. I do not know whether it is the intention of the Party to which he belongs to vote to-day as a Party, but if so, I have great hopes that they will follow the lead given by the Leader of their Party in the other House and will support me. The opposition, Sir, appeared to come from a certain body of opinion which was voiced by some members of the Select Committee, who, I think, are mostly connected with the Press. Well, Sir, I can understand that the Press may be inclined to a certain timidity. But I have been unable to appreciate the grounds for their timidity, and if there is any timidity on the part of representatives of the Press, I fancy it must be based rather on instinct than on reason. Paradox, Sir, is in its proper sphere entertaining and may even be suggestive, but when paradox is intruded into serious argument, and in fact takes the place of serious argument, it is apt to be a little bewildering. I am led to this reflection by considering a remark which was made in the dissenting minute of the Select Committee. They said that this measure would be a regrettable concession to intolerance. Well, Sir, let me take a simple illustration. Let us imagine a primitive society living remote from the world, governed by no code of laws, and in that society it is found that the practice of stealing begins to prevail to such an extent that it becomes a nuisance to the whole community, and they decide that they must impose a definite penalty

[Mr. H. G. Haig.]

against stealing. Well, Sir, if those primitive people were told that by imposing a punishment for theft, they were making a concession to theft, I think they would be very much puzzled, and I feel sure that those primitive thieves would say that that was a kind of concession that they could very well do without. I think in the same way we may be excused if we find some difficulty in understanding how a measure which imposes a penalty on those who are intolerant can be described as a concession to intolerance. What this measure aims at doing is not to concede unlimited licence to the intolerant.

There has been other criticism of a general character about the rights of the subject and freedom of speech, all based on what appear to be good, liberal principles. But, Sir, I would appeal from these critics to one who as a man of letters and an exponent of liberal principles would, I think, challenge comparison with any of our present day critics. I mean Thomas Babington Macaulay. The Council are no doubt aware that in the year 1837 Macaulay was President of the Indian Law Commission which considered the first draft of the Indian Penal Code, and in the course of the consideration of the draft of the Code, he was brought up against exactly the same general problems which have been discussed recently in connection with this Bill, *viz.*, whether it was justifiable to make offences against religion punishable under the Criminal Code. I would like to read to the House very briefly one or two extracts from the portion of that report dealing with the Chapter which is now Chapter XV of the Indian Penal Code, and I think no one who hears those extracts will doubt that they were written by Lord Macaulay himself. This is how the note began :

"The principle on which this Chapter has been framed is a principle on which it would be desirable that all Governments should act, but from which the British Government in India cannot depart without risking the dissolution of society. It is this, that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another."

Later on, they say :

"Such insults, when directed against erroneous opinions, seldom have any other effect than to fix those opinions deeper, and to give a character of peculiar ferocity to theological dissension. Instead of eliciting truth they only inflame fanaticism."

I would like the House to contrast that last sentence with the statement made by the dissenting members of the Select Committee that the Bill may tend to increase fanaticism because it creates a new offence—another instance, Sir, I suggest, of the habit of paradox.

Finally, I will give one more extract from the report of the Indian Law Commissioners. After describing the state of affairs in India, which is in its essentials remarkably true to-day even though ninety years have passed, they say :

"Such a state of things is pregnant with danger which can only be averted by a firm adherence to the true principles of toleration."

What I wish to emphasise is that the Indian Law Commissioners considered that their proposals—and our proposals follow exactly the same principles—were in accordance with true principles of toleration. We hold that it is not necessary in the pursuit of truth to make malicious attacks on what is held to be sacred by

others, and I believe that is a sentiment which will be endorsed by the Members of this Council. After all, I have heard no answer to the plain question which was put in another place by the Leader of the Congress Party : Does any one desire that a person should be allowed, with the deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, to insult that religion ? Does any one desire that ? There may be certain persons in this country who do desire it, but I am perfectly certain that there is no one in this Council who has any such desire. Those who in their hearts do not disapprove of religious controversies being carried to these extreme lengths may reasonably oppose the Bill. But this is not the view of the vast majority of people in this country, and provided that full protection is given to the honest expression of views—and I maintain that no one can doubt that such full protection is given—I do not think that any reasonable man need hesitate to support this Bill.

THE HONOURABLE SETH GOVIND DAS (Central Provinces : General) :  
 First of all, Sir, I want to make the position of my Party clear in this respect. Yesterday, when I wanted three days' time, it was only for considering the Bill as well as the amendments which many members of my Party wished to move to this Bill. We have not made the question a party question, and the members of my Party are at liberty to vote in any way they like.

I have very carefully heard the speech of my Honourable friend, Mr. Haig, and also of the supporters of this Bill in the other place, and yet I am not convinced that there was any necessity for bringing forward this Bill. I have very carefully thought over the matter, and I have in the end decided to oppose this Bill. That, Sir, I am doing on general grounds, and not on any technical grounds because I am not a lawyer. I know that there is a very considerable difference of opinion in this respect, even among the eminent lawyers of this House as well as of the other place. But, Sir, it is rather difficult for all lawyers to come to the same conclusion, as they always find something to say for and something against everything in the world. In my humble opinion on such general questions the opinion of a layman should weigh more than the opinion of lawyers who always think of and see everything in legal terms.

I oppose this Bill, but let me not be misunderstood. I am not for accusing any Hindu avatar or any Mussalman prophet. My reason for opposing this Bill is, that even to-day our law is comprehensive enough for dealing with such persons who accuse these great personalities. The Honourable Mr. Haig himself pointed out that section 153A of the Indian Penal Code deals with this question. But, Sir, his difficulty is that it does not show direct ways of punishment. What the Government always want are direct ways of punishment. This the Government have wanted in everything and not only in this respect. Sir, let me point out that in the matter of law and order much mischief has been done which should not have been done. Then, Sir, according to the Honourable Mr. Haig himself, this piece of legislation is not the true remedy of the troubles at present. And, on the other hand, we find that this Bill adds a new offence to the Indian Penal Code, and what I am afraid of is that in course of time this offence, which looks so simple to-day, may become of an entirely different nature. When the Criminal Law Amendment Act was passed, nobody for a moment, nobody even in his dream, thought that it was going to be



[Seth Govind Das.]

used in the way in which it was used in 1920-21 during the non-co-operation days. We have all become very suspicious, Sir, and the reason of our suspicions is the action of these Treasury Benches. They are responsible for the suspicions which we have.

Even to-day we find ourselves bound hand and foot. There is the Criminal Law Amendment Act, there is the law of sedition, there is section 153A in the Indian Penal Code, which has been referred to by my Honourable friend Mr. Haig, and there are so many other repressive laws in this country. For a man who is not a lawyer and who knows how the Government have used these laws for their purpose, it is not possible to support this measure, even though, on the face of it, it may look an innocent one.

Another reason that I have for opposing this Bill is, that I do not think that the Hindu avatar or Muslim prophet requires any protection at the hands of the law. So far as Hindu avatars are concerned, they had been in the past criticised, and badly criticised, not by the members of other communities only, but by certain sections of the Hindu community itself. We find, Sir, that in spite of these criticisms they are worshipped with the same devotion with which they were worshipped from the very beginning. They are respected with the same zeal as they were respected in ancient times.

As has been pointed out by my Honourable friend Mr. Haig, there is no doubt the Select Committee has improved the Bill to a certain extent. It no doubt provides certain safeguards. Certain amendments were moved in the other place and certain amendments are going to be moved here, but the whole question is whether we should have an evil thing at all. There might be safeguards, but still the evil will remain an evil.

I know that when the Bill was passed in the other place without any good amendments and with one amendment which has made the Bill even more mischievous, it will not be possible for this House to reject this Bill or to pass amendments which might improve the Bill to a certain extent. Still it is my duty to say what I think proper regarding this Bill. Only to record my opinion I am opposing it. With these few words, Sir, I oppose the motion which has been brought forward by the Government.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY (West Bengal : Muhammadan) : Sir, I rise to give my whole-hearted support to the motion of my Honourable friend the Home Secretary. The circumstances which have necessitated this piece of legislation are well known and need not be recounted here. I must, however, emphatically repudiate the unwarranted suggestion and baseless insinuation in certain quarters that the present measure of legislation is undertaken as a concession to Muslim clamour and to pander to Muslim communal passions. Nothing could be further from the truth. In undertaking the present piece of legislation, Government are simply carrying out the recommendations of the learned Judge contained in the judgment in Rajpal's case, which was prominently brought to the notice of Government by the dissatisfaction it caused to the Muslim public and gave rise to agitation amongst them throughout the length and breadth of India. Fervent appeals were made only the other day elsewhere in connection with the Hindu Child Marriage Bill to Government not to remain neutral or yield to the clamour of

orthodoxy in matters of social reforms, and not to hesitate to do what is obviously right and inherently just. But when Government do what is obviously right and inherently just, as in this case, they are unjustly blamed and charged with partiality to Muslims. Sir, Mr. Justice Dalip Singh, the learned Judge who recommended legislation along the lines of the provisions of the present Bill, is a Sikh by nationality and race, a Christian by faith and religion, and a Brahmo by marriage. There is not the least shadow of suspicion of Islam or Islamic predilections about him. How then can Government be accused of partiality to Muslims in giving effect to his recommendations? The best proof of the neutrality of Government and testimony to their impartiality is the fact that in the matter of this legislation they are blamed by Muslims and non-Muslims alike. Elsewhere in some quarters strong comments have been made on the conduct of Muslims in criticising the judgment of Mr. Justice Dalip Singh and their action condemned as casting improper reflections on the Judge himself. Sir, if Judges are infallible, I cannot understand why there are so many courts of appeal and why there is such a wide-spread agitation in Europe and America against a recent judgment of one of the highest tribunals of the United States of America. Sir, in the art of agitation the Muslims are but the new disciples and inexperienced pupils of their non-Muslim friends. So far back as 1883 the late Surendra Nath Banerjee, the great Tribune of the people, and uncrowned King of Bengal, condemned in the strongest terms the action of Mr. Justice Norris in bringing a *saligram*, a stone idol, into the court for identification and described it as an act of sacrilege and insult to the religious feelings of the Hindus. He did not hesitate to compare Mr. Justice Norris with the notorious Jeffreys and Scroggs. With your permission, Sir, I beg leave to read an extract from the charming autobiography of that late lamented leader :

"The next incident in my journalistic career that I think should be placed on record is the Contempt Case, for which I was sent to prison for two months. I claim the honour (for such I deem it) of being the first Indian of my generation who suffered imprisonment in the discharge of a public duty. The Swarajists now make imprisonment a qualification for public service. Well, I claim that I possess it, even from their standpoint, and that I was qualified long before any one of them.

The facts of the Contempt Case are these. On April 2nd, 1882, the following leaderette appeared in the *Bengalee* :

'The Judges of the High Court have hitherto commanded the universal respect of the community. Of course, they have often erred, and have often grievously failed in the performance of their duties. But their errors have hardly ever been due to impulsiveness, or to the neglect of the commonest considerations of prudence or decency. We have now, however, amongst us a judge, who, if he does not actually recall to mind the days of Jeffreys and Scroggs, has certainly done enough, within the short time that he has filled the High Court Bench, to show how unworthy he is of his high office, and how by nature he is unfitted to maintain those traditions of dignity which are inseparable from the office of the judge of the highest court in the land. From time to time we have in these columns adverted to the proceedings of Mr. Justice Norris. But the climax has now been reached, and we venture to call attention to the facts as they have been reported in the columns of a contemporary. The *Brahmo Public Opinion* is our authority, and the facts stated are as follows : Mr. Justice Norris is determined to set the Hooghly on fire. The last act of *subordination* on his Lordship's part was the bringing of a *saligram*, a stone idol, into court for identification.....'

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces: Nominated Official) : Is the action of Mr. Justice Norris under consideration, Sir ?

**THE HONOURABLE THE PRESIDENT :** I have observed that the volume in the Honourable Member's hand is a somewhat bulky one. I hope he has no intention of reading it all. I have tried to listen carefully, and I have seen so far no very great relevance to the matter under discussion in the extract which he is reading.

**THE HONOURABLE MR. MAHMOOD\* SUHRAWARDY :** I read with your permission, Sir, and I stand corrected now. Unless blinded by communal passions and led astray by the bias of religion, our non-Muslim fellow-subjects, who are deeply exercised over the publication of a book which few have read, should place themselves in the position of Muslims whose religious susceptibilities have been outraged and feelings deeply stirred by the scurrilous attack on the character and personality of their beloved Prophet in a vile publication under the offensive and provoking title of *Rangila Rasul* and not under the designation of "Mother India"—a title which, at any rate, does not savour of irreverence or disrespect. Sir, in my humble opinion, Government are perfectly justified in taking note of the deep feeling of resentment caused in the breasts of a large section of His Majesty's subjects, specially in these days of communal strife and conflict, and they would have been failing in their duty if they had not given effect to the recommendation of Mr. Justice Dalip Singh and attempted to remedy the defects in the existing law by undertaking legislation along the lines suggested by him. Sir, with these words I lend my whole-hearted support to the motion of the Honourable the Home Secretary.

**THE HONOURABLE RAI BAHADUR NALINATH SETT (West Bengal : Non-Muhammadan) :** Sir, I do not think that this Bill will have the effect desired. I have not the least sympathy with those enemies of society who indulge in scurrilous writings against religious beliefs or religious prophets. Nobody will deny that the State should have power to punish such people. But the question is, what would be the effect of this piece of legislation? It will only excite the passions of those people whose clamour has forced the Government to bring this legislation on the legislative anvil. In my humble opinion, Sir, the present laws are quite sufficient and are drastic enough to bring these writers within the clutches of the law.

Sir, this Bill, if passed into law, will curtail the freedom of speech and of opinion which is not desirable, as it may be used under pressure against social reformers or those who are anxious that the people should understand the true import of religious tenets and laws. In a vast country like India, where there are so many different religions amongst the people, there is bound to be some amount of discussion with regard to religious beliefs. Although it is not at all desirable that any person who is held in respect by any community should be calumniated by any person either belonging to the same community or to any other community, and I think one who does so should be punished, which can be done under the existing laws : criticisms for the betterment of social or religious observances not made with intent to lower such person in the estimation of his community should not be gagged. No doubt the present Bill refers only to cases where the words either spoken or written have deliberate intention to outrage the religious beliefs and feelings of any community. But I fear, Sir, that it would be very very difficult for any person to prove or disprove success-

fully that any one spoke or wrote the words with or without such intention. A mere cursory reading of the ingredients of the would-be offence brings into prominence the intrusion which the prosecutor and the judge will have to make into the realms of psychology.

Sir, I believe the sort of writings which every sane man will condemn will come under the present criminal laws, because such writings, unless they bring in or excite communal hatred, should not be punishable. No case has arisen for adding to the list of repressive measures. Sir, some of the agitators went to the length of demanding the resignation of an Honourable Judge. That well-known and single decision may, for aught I know, be pronounced to be an erroneous view of the law. In fact, there has been another view of the law in another case. But to ignore the healing effects of time, and to raise a clamour, is zeal running amuck. Fanaticism could go no further. The present day communalism certainly demands strong measures in action but not in new laws. Sir, I regret that the Bill has been brought at this juncture, as I believe that, instead of allaying the feelings of the various communities, it will promote more ill-feeling and fanaticism. The present situation demands above everything else a broader outlook on men and things so that the mean and the scurrilous may find its proper level in the gutter, a philosophic and sympathetic goodwill so that the evil-minded and the rancorous may have to hide their faces in the light of higher nature, and an appeal to the highest culture and highest traditions of the people, so that narrow and selfish interests may be difficult to propagate. If the Legislature of a country forgets these obvious truths, and expects by legislation to guide and lead the religious beliefs and feelings in right channels, I regret that its ambition is too high and I, as a member thereof, must confess that our intrusion will only excite the pity of men of thought of the world.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR (Madras : Muhammadan): Sir, I am sorry that on this occasion I will have to differ from my Honourable friend Seth Govind Das. My Honourable friend who opposed this motion contended that there was no necessity for this legislation. But, Sir, I feel that this is a position which is hardly tenable in the face of undeniable facts, in the face of events which have transpired so recently and which have so much threatened to disturb the peace and tranquillity of this country, ever since that remarkable judgment was delivered by Justice Dalip Singh. Sir, until the Government notified their intention of modifying the law, not a day was allowed to pass on which protests were not heard in some part of the country. From the press, pulpit and platform, emphatic protests were sounded, crying against the unsatisfactory state of the present law. To cast unmerited abuse, to burst into anathemas and vilifications, to utter scandals against personages held in such high esteem by multitudes of their followers and yet go scot-free, such was revealed to be the unhappy condition of our law. There was in consequence a demand from all quarters that this defect should be at once remedied. Therefore, Sir, it is a travesty of facts to say that there is no necessity for the enactment of such a law as that before us to-day.

Now, Sir, my Honourable friend Seth Govind Das has remarked that this law was unnecessary, because those avatars and prophets did not stand in need of any protection from the law. Well, Sir, that is a very curious argument, and

[Saiyed Mohamed Padshah.]

I feel constrained to meet it in the same vein in which it has been advanced. I admit that these avatars and prophets are above all calumny. I admit that they do not stand in the least necessity of protection from the law. But, Sir, surely that is just the reason why such a law should be enacted, for it is obvious that if these avatars and prophets could in any way have been affected by such calumny, then the matter would have been one which would have concerned only themselves, and their followers could very well have rested content. But, Sir, since this is not the case, since those avatars and prophets are above all such vilifications, it is the people who believe in those avatars and prophets and who have such high esteem and regard for them who feel injured and who consequently are anxious that such a thing should not go unpunished, and there should be no loophole left to people to indulge in such undesirable vilifications. It was remarked by the Honourable Member who spoke last that it would have been better that such things should, if at all, be dealt with under the existing law of this country. I admit, Sir, that I am also of the same opinion, but we would be living in a fool's paradise if we could believe that such a thing would be possible in the future. Ever since that famous judgment, to which I have already referred, has been pronounced in the land, it looks as if the present law would not be sufficiently calculated to deal with these things; and though, Sir, I myself am of opinion that section 153-A by itself should be quite sufficient to deal with these cases,—for to me it looks as if it does not stand to reason to say that anything that can be said as amounting to an abuse of the prophets of a religion cannot necessarily be said as amounting to an insult of that religion, and that this is really a very curious piece of logic—but so long as the courts in our country are in a position to enunciate such a proposition, it is necessary that the present state of the law should be improved, and the whole thing be made more clear: and this purpose is best served by the enactment of the proposed legislation. Now, Sir, my Honourable friend, Seth Govind Das, read a long list of repressive laws with a view to making out that the proposed law was also one which could come under that category. But I ask, Sir, whether, in fairness, it could ever be contended that this proposed legislation is one which could come under that category. Can it be seriously contended that anybody has any right maliciously and deliberately to offer an insult to the religion or religious beliefs of others? Can it be contended, Sir, that to offer such insult is an innocent and legitimate act which everybody is at liberty to do as a sort of natural right? Can it be contended that to prevent and punish such an act is to restrict one's right or to curtail one's liberty? Can we conceive of any plea more unnatural than this, more ludicrous, more preposterous? Since we feel, Sir, that none of these contentions is tenable, it is obvious that we should feel bound to support the legislation which is proposed to be enacted.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab: Sikh): Sir, I have heard with great attention the speech delivered by my Honourable friend, Seth Govind Das, in opposing this measure, and I had the opportunity to hear the speeches of some of the learned Members of the Assembly the other day when this motion was under debate there. Of course my Honourable friend, the Home Secretary, has explained very fully the

grounds and the reasons which have necessitated the Government taking this action of bringing forward legislation. It has been said from the opposition side that the armoury of the laws of the country does contain a sufficient number of sections already to cope with the offence which is contemplated to be caused by religious controversies. With all respect to their opinions, I think controversy in religion has come to such a pass that it is becoming certainly very criminal. This is to be confessed with great pain, and I think it is the duty of the leaders of every community to put a proper restraint on the men who are the preachers of their religion or who are in a position through the Press of preaching their religion. The time has shown, and the circumstances have proved, that either the leaders of the communities have perhaps lost their hold, or that the preachers and the Press have become so abundant in number that they do not care for their leaders and say whatever suits their personal purpose or purse. Religions of course have been started by Prophets in this world for the purpose of giving peace in this life to humanity and solace after it, but they have to our greatest regret been misused in such a way as is causing murder, arson and other criminal actions. Of course it is to be regretted very much that religion is being so misused. My opinion is this, that, as far as I have been able to read history, religion has not in all times been the lot of all. Really a very small proportion of humanity has been able to understand religion in the right sense and to exercise it in their daily conduct. This has been apparent at every time

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and in every age in history. But unfortunately at the present time it so happens that the majority are after shadows and are leaving the realities of religion. They simply confine religion to the ritualistic part of it and entirely ignore the philosophy of religion, the essence of religion, which is the most important part to be adopted. With such a set of unfortunate circumstances, things have come to such a pass that we are required to come to Government to assist us to make such a law that nobody may be able wantonly to offer insults to religious feelings or religious beliefs of others. It has been said that there is no necessity for bringing forward any law because there are sufficient sections in the Indian Penal Code. With respect to this, Sir, I beg to say that in the Select Committee I find the names of some eminent lawyers, such as Pandit Melavivajee Mr. M. A. Jinnah, Mr. M. R. Jayakar and Mr. Srinivasa Iyengar, and they have given their support to the passing of this Bill. Of course it has been said that section 153-A could cover the offence which has been defined in section 295-A. With this view, Sir, I beg to differ, because I do not find that the words of section 153-A. are sufficient to cover the offence which is contemplated in this section. Apart from that, Sir, I find there are two different rulings of the same High Court on this point. The judgment delivered by the Bench of Honourable Judges of the Punjab High Court in the *Vartman* case does not refer to the judgment of the Honourable Justice Dalip Singh; it neither overrules it, nor draws any distinction between the nature of the offences discussed in the case of *Rangila Rasul* and in the *Vartman* case. In my opinion both these rulings stand as good laws and can be quoted by lawyers in subordinate courts in support of their clients. When both these rulings stand as good laws in the reports of the High Courts, there is necessity that a Bill should be passed in clearer language which would make an insult to the Prophet or to the religious beliefs or religious susceptibilities of another community a

[Sadar Shivdev Singh Oberoi.]

distinct offence. Of course, as I have said, we must confess our inability that we have not been able either so to control or restrain our Press or preachers as not to propagate hatred instead of love under the cloak of religion; and as we have failed, the necessity has arisen for such a measure being brought on the Statute-book. I agree with the idea that without the safeguards which have been tabled to be moved in this House later on, this measure might in practice prove a very drastic one, but if Honourable Members on the Government side agree that some of the amendments which are to be moved in this House are reasonable and must be put in as safeguards to this measure, I think the measure would prove useful to Indians and it ought to be placed on the Statute-book. With these few observations, I support the Bill.

THE HONOURABLE MR. H. G. HAIG : Sir, the motion before the House has received such general support from Honourable Members that it is only necessary for me to make one or two brief observations in replying. My Honourable friend Seth Govind Das did not argue that the new section in itself was a dangerous one, I think, but he was suspicious as to how the executive Government would make use of it. Well, Sir, it is very flattering to the self-esteem of the Government to find ascribed to them these attributes of omnipotence; but I feel that facts are otherwise. A section has to be interpreted, and is interpreted, by the High Courts by what it says and not on any other consideration, and if the wording of the section is satisfactory, the safeguard is complete. My Honourable friend also remarked, if I heard him aright, that it was unnecessary to provide any legislative protection for Hindu avatars. Well, Sir, I have no doubt that this is the honest opinion of my Honourable friend and I honour him for it. But I do not think he can claim that that is the general opinion of his co-religionists. The experience of Government, Sir, is that they are constantly bombarded with requests for precisely this protection, for action under the law, from various members of the Hindu community in respect of what they conceive to be insults to their religion. I need say no more, Sir, I think, in commending the motion to the House.

THE HONOURABLE THE PRESIDENT : The question is :

"That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

THE HONOURABLE THE PRESIDENT : The question is :

"That clause 2 do stand part of the Bill".

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative) : The amendment which I wish to move, Sir, reads as follows :

"At the end of clause 2 add the following :

*Explanation.*—It is not an offence within the meaning of this section to criticise the principles, doctrines or tenets or the observances of any religion with a view to investigate truth and improve the conditions of human society and to promote social religious reform."

THE HONOURABLE THE PRESIDENT : The Honourable Member has not read the amendment as on the paper. He has altered every "or" that

occurs in the amendment to "and". I do not know whether that is deliberate.

**THE HONOURABLE MR. G. S. KHAPARDE:** No, Sir. Probably I could not read through these spectacles which are intended for distant vision.

The reason why I move this amendment is that modern legislation, I find, is very terse, very brief, in the interests of accuracy, but to that extent it becomes difficult to be understood except by lawyers; the implications of this section will not be clear to the minds of many. After all, law is intended to be understood by all people and not to be confined to the interpretation of learned lawyers, as the presumption of law is that everybody knows the law. So, if it is to be the presumption that everybody knows the law, everybody must be at least in a position to understand what is put down there. That is the reason why I have put down this Explanation. The other reason which I believe has not yet been discussed is that this new section which is sought to be enacted is somewhere between section 499 of the Indian Penal Code which relates to defamation, and section 153 of the same Code, which relates to the setting of one set of people against another. This section comes somewhere between the two. Really speaking, offences against saints or deceased people could be brought under section 499, which is a case of defamation; it is permissible to prosecute a person for defaming dead people. Under section 153 the person is to be prosecuted not for defamation, but for setting one part of the community against another. So this section occupies something like a middle position. Those who say that this legislation was unnecessary had probably in view the fact that anybody who speaks against saints and prophets can be prosecuted under section 499, that is, defamation. Personally, I think that it is fortunate that this section is being enacted and is to be put on the Statute-book, because this middle portion appears to have given rise to a great deal of difference of opinion. The point did require to be cleared up, and I am glad it has been cleared up. But probably it will be objected by some that the point I wish to clear up in my Explanation has already been incorporated in the section and therefore there is no need for such an Explanation. My reason for doing this is, as I stated before, that, although this point is really contained in the section, it is not apparent to the mind of the ordinary reader. I want to make it apparent to everybody, more especially to that large number of journalists who are engaged in writing and who probably may not be able to catch all the implications that are involved in the brief language of the section. That is my only reason. I do not seek to modify the law as it is laid down, nor do I wish to make it lighter. All that I wish to do is to make it clear. This opinion has also been expressed in the other House and finds expression in a dissenting minute to the Select Committee's Report. That is the reason why I move this amendment.

**THE HONOURABLE MR. J. CRERAR** (Home Member): Mr. President, before I say a few words in opposition to the Honourable Mr. Khaparde's amendment, perhaps I may be permitted to express my satisfaction in finding myself once more in my place in a House of which I had been a member for nearly four years—(Applause)—also my regret that the business in another place has prevented me from being more frequently in my place.

Now, Sir, I turn to the Honourable Mr. Khaparde's Explanation. My general and fundamental objection to it is that it is an Explanation which does



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not explain but which explains away. If this amendment were adopted, the whole Bill would become entirely inoperative. The Honourable Mr. Khaparde has said that his principal object in moving this amendment is to make it plain to the general public what the state of the law is. Now, Sir, I venture to suggest that, if any one sits down to compare closely the terms of clause 2 with the terms of the Honourable Mr. Khaparde's Explanation, his feeling would be one not of comprehension but of extreme bewilderment. The purpose, the intention and the effect of the Bill, as it stands, cannot fail to be understood by any one who honestly desires to understand it. Even the particular point raised by the Honourable Member can be met. The general intention of the Bill is perfectly clear. It can be apprehended by a man of very limited intelligence, and if there were any difficulty in interpretation, I venture to point out that its interpretation and application will not be carried out by some untutored member of the public but by an expert court of law. I would merely invite the attention of the House to what the effect of this Explanation would be, omitting some unnecessary words to make my point precise. The Explanation says :

"It is not an offence within the meaning of this section to criticise the principles . . . . . of any religion . . . . . in order to promote religious reform."

In other words, if this Explanation is given effect to, anyone could employ the most scurrilous, the most contumelious, the most insulting language if he contended and was able to show with some degree of probability that his intention was some kind of religious reform. Now, the words "to promote religious reform" are of very wide extension. They might extend to conversion from one religion to another. They might even mean the abolition or the subversion of a religion, and yet the terms of the Honourable Mr. Khaparde's Explanation, if they were added to this clause, would undoubtedly protect the man who, with that intention in his mind, resorted to the most scurrilous and abusive language. I think that, in view of these considerations, the House will not agree to this amendment.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR : I am sorry, Sir, that I have again to differ from another friend of mine, the Honourable Mr. Khaparde. Sir, as was pointed out just now by the Honourable the Home Member, this amendment is not after all quite as innocuous as the Honourable Mr. Khaparde makes it out to be. The Honourable the Home Member rightly stated that if this Explanation was inserted, it might not only explain but actually explain away the whole thing. I say, Sir, that this amendment is not only superfluous but will render perfectly nugatory the effect of the main section. It is superfluous inasmuch as the cases which need to be protected are entirely kept out of the purview of the section. The Select Committee has already made this section clear and specific, and I see that my Honourable friend Mr. Khaparde realises this point. That was the reason why he tried to justify his amendment on the ground that the law which would have such a wide application ought to be so worded that it should be clear to the layman. He further contended that not only should a lawyer be able to understand the import of this section but that any and everybody must be in a position to understand it. Here, again, I will have to repeat.

what the Honourable the Home Member has already said, namely, that even in this respect the law is quite definite and specific, and that anybody who makes a really honest endeavour to understand it could easily understand its meaning.

Now, Sir, as to the other aspect of this amendment, I mean its dangerous aspect, I wish to say a few words. I feel that if this Explanation is inserted, it will not only nullify the practical effect of the main section but will also give a very great impetus to the perpetration of those very acts which it is the purpose of this new law to prevent. I feel, Sir, that if we provide this unnecessary safety valve, which is simply redundant, the result will be that we would throw wide open the floodgates of vile abuses and vituperation. Deliberate insults, malicious imputations designed wilfully will be hurled from all parts of the country, and with perfect impunity, and all because of the subterfuge offered by the ostensible excuse of fair criticism for some one of the purposes specified in the Explanation. All these persons will have to be protected, and the result will be that this Explanation which is proposed in the amendment instead of serving as a mere Explanation will provide a very convenient and dangerous exception to the main section. I feel, Sir, that my Honourable friend when he proposed this amendment did not realise the dangerous aspect of it, otherwise, I feel sure, he would not have brought forward this amendment. His object is to provide for laymen who want to make a comparative study of religions. His object is that those who indulge in fair criticism of the various religions should not be deterred by the apprehension that this law would prevent them from making even fair criticism. But my Honourable friend totally failed to realise the dangerous aspect of his amendment. Able lawyer as he is, we cannot expect him to maintain that deliberate and malicious insults are among the rights and privileges of any fair criticism. I therefore oppose the amendment.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI : Sir, I feel that there must be some protection for honest critics and students of research. I feel that in this section of the Bill an attempt has been made to give protection to such men, but I do not think that it is quite sufficient. It has been provided by the addition of these two words "deliberate and malicious" intention. With respect to this I beg to say that an intention is after all to be judged by the conduct of the man who is under trial, and it is not such a point as can be proved by any tangible evidence in the courts of law. In every section of this nature—that is section 295-A—I think exceptions have been provided for those who do not intentionally insult or defame any person or any religion or the religious susceptibilities of any man. We know that there are about 10 exceptions to the law of defamation. The necessity for the Explanation proposed in the amendment is on account of this reason also that in the present times I feel that religion has been very much, if I can use this word, polluted or it has become much degenerated. Whatever is preached nowadays is simply the means to that religion and the end is altogether forgotten. The greatest controversy arises not only on the philosophic portion of any religion, because I believe all the Theists generally believe in one God and the fraternity of man—they all agree in this respect with one another—but the controversy which leads to unpleasant consequences arises out of the ritualistic part of the religion on which nowadays great stress is laid, and the essence of religion is entirely forgotten and

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thrown overboard. Even nowadays I feel that in every community following a certain religion the real principles of religion are not very much inculcated and not very much followed. I, as a Sikh, am enjoined by my religious principles to believe in one God and to believe in the fraternity of humanity. If I forget generally to practise this in my daily life, I will not be able to derive good from my religion. What I have come to think or conceive of religion is to offer prayers according to what has been laid down for a Sikh and keep the outer form of Sikhism. I can say this of my community, and I think I can also say this of other communities as well. The principles of religion are brought down to the level of ritualism to a very great extent, and it is absolutely necessary that there should be a reform in this direction. If, for instance, a man whose soul is much more developed than the ordinary run of humanity in a particular community thinks that such and such a ceremony or such and such an observance is being brought forward or practised in a community, and if that man thinks that those ceremonies or observances are not consistent with the principles or the philosophy of that religion, he comes forward to bring about reform in that respect and to stop such ceremonies and observances. In doing so, he has to show to the public the dark side of those ceremonies and those observances. If he does so, the Law Department of the Government can say under the present law that he is insulting the religious feelings of other men, and he may be hauled up in a court and sentenced to two years' rigorous imprisonment. I feel, Sir, that some protection should be given to those reformers who might bring forward reforms in the direction mentioned above. The Honourable the Home Member said that, if this Explanation is put down in the Bill under clause 2, it will remove the effect of the whole law, and with regard to this I beg to propose, with your permission, the addition of a few words which will have the effect of not removing the effects of the present law. I wish to add the words :

"provided that the language of such criticism is not offensive".

If this addition is acceptable to the Honourable Mover of the amendment, I would like it to be inserted in the amendment proposed by him. I hope this will serve the purpose of the Honourable the Home Member also, because if any reformer comes to make any reform in the religion or the religious observances of that religion, he might be at liberty to do so. In doing so, he should not use any language in that criticism which may be offensive to the members of that community or the members of any other community. With these few words, I wish that the Honourable Member who moved his amendment will accept this addition to his amendment, and I hope he will accept my suggestion.

THE HONOURABLE THE PRESIDENT: Further amendment moved :

"That to the Explanation proposed in the amendment of the Honourable Mr. Khaparde the following words be added—'provided that the language of such criticism is not offensive'."

THE HONOURABLE MR. J. CRERAR: Sir, I regret very much that we are unable to accept this further addendum suggested by the Honourable Sardar Shivdev Singh Oberoi. My reply to the whole position he took up is this : that if you examine the clause carefully as it stands, the case of a man who in good faith criticises religious ritual or religious tenets but refrains from using offensive language, does not come within the danger of the Bill, for the simple

reason that in each case the prosecution has to prove a deliberate and malicious intention of outraging religious feelings and an insult to religion or religious beliefs. It seems to me that the language of the clause as it stands is far more specific, far more intelligible and far safer than that which the Honourable Sardar proposes to add, because the addition which he proposes—"provided that the language used is not offensive"—is a very vague, very ambiguous and very equivocal expression. Offensive to whom? This amendment may or may not leave it to the courts to determine whether it was offensive or not. At the best it would leave the court with what I would venture to say is an impossible task of interpretation. But it might even be held that a single member of the community concerned might appear to give evidence and say that he, at any rate, was offended by the language. In that case the person to whom the Honourable Sardar Shivdev Singh proposes to extend this particular protection would find it an exceedingly inadequate and entirely ineffective protection. My point is that we considered very carefully the language of the clause as it stands, and we considered that it was far more intelligible, far more effective and far safer for those who, with honest intentions, may possibly be regarded as having come in some remote degree within the danger of the clause.

THE HONOURABLE THE PRESIDENT: I think perhaps we had better get out of the way, first, the amendment proposed by the Honourable Sardar from the Punjab.

THE HONOURABLE MR. G. S. KHAPARDE: I am willing to accept it.

THE HONOURABLE THE PRESIDENT: The question is:

"That to the Explanation contained in the amendment of the Honourable Mr. G. S. Khaparde the following words be added, namely:

'provided that the language of such criticism is not offensive'."

The motion was negatived.

THE HONOURABLE THE PRESIDENT: The Council is now back on the Honourable Mr. Khaparde's amendment.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA: Sir, I have the fullest sympathy with the motive underlying the amendment proposed by my Honourable friend, Mr. Khaparde. But, as was clearly pointed out by the Honourable the Home Member, this Explanation hardly protects the honest critic of religion more than the wording of the Bill itself. I have been administering the criminal law for the last thirty years practically. Sir, I have not just now consulted the Indian Penal Code; but to the best of my recollection such drastic wordings to safeguard an accused person will probably not be found in a single section of the Indian Penal Code. We generally have such words as "whoever intentionally does such and such a thing", etc. But instead of the word "intentionally" we are now going to provide in the present Bill such drastic words as "with deliberate and malicious intention." Now, Sir, what could be clearer than that? I have often been told by eminent lawyers that it is very difficult to prove intention; I say that it is extremely more difficult to prove that there is deliberate and malicious intention. Unless a writer or speaker has been extremely bitter, intemperate and insulting in his criticism of anything religious, I think it will

[Pandit Shyam Bihari Misra.]

be very difficult for the prosecution to bring him within the four corners of this very clear and emphatic expression "with deliberate and malicious intention." So I think these words constitute a very clear safeguard for the honest critic of religion.

I have already said that I have genuine sympathy with the motive underlying my friend's amendment, but the amendment is for these reasons to my mind superfluous. Instead of safeguarding the accused, perhaps this Explanation may render the Bill itself inoperative as the Honourable the Home Member has so clearly pointed out. The words sought to be introduced by means of this Explanation may entitle a man to enter into a very scurrilous criticism of any religion and to be safeguarded in doing so by the Explanation proposed to be added, for it would not be an offence within the meaning of this Explanation to criticise the principles of a religion in any way you like—whether temperately, intemperately, bitterly or scurrilously, as you please—it is all criticism; it may be good criticism; it may be bad criticism; but it is nevertheless criticism. Therefore, to say that to criticise any religion with a view to promote social or religious reform would be a dangerous extension and a dangerous explanation to add. As the Honourable the Home Member has pointed out, the very object of the Bill would be rendered futile and the Bill would become practically inoperative. I do not think honest criticism will be punishable under the Bill as it stands.

If this Explanation had been a little more clearly expressed, it might have been possible perhaps to accept it, but there is yet another consideration which cannot be forgotten. It is necessary to enact such a measure at once. The whole House is aware of the bitter controversy that had been raging in the country as a consequence of the judgment in the *Rangila Rasul* case; that has become a notorious case, and the critics went to very extreme lengths indeed. But, at the same time, nobody can claim that they had not some justification for saying that a man who criticises a saint or a prophet or an avatar so scurrilously should be punished. Mr. Justice Dalip Singh honestly came to the conclusion that the criticism did not come within the provisions of section 153A of the Indian Penal Code; but a Bench of the same High Court in another case, the *Risala Vartaman* case, came to a different conclusion. But as pointed out by my Honourable friend, Sardar Shivdev Singh Oberoi, the two judgments are there and it is possible there may be a difference of opinion, and some courts may easily refer to the ruling of Mr. Justice Dalip Singh. I have the highest respect for the legal acumen and impartiality of Mr. Justice Dalip Singh. It would be futile for a moment to believe that he decided the case otherwise than upon what he considered to be the right interpretation of the law. But whether that interpretation of the law is right or wrong, I am not in a position to say. Therefore, it has been thought proper to make the whole law clear, so that there may not be any difference of opinion. Now, Sir, if we were to insert this Explanation at this stage, what would be the result? The result would be that this Bill would have to go back to the Legislative Assembly, but that House has already adjourned *sine die*, and therefore the Bill cannot be passed before the next Session in Delhi, and that, Sir, is extremely undesirable.

THE HONOURABLE SETH GOVIND DAS: Where is the harm?

**THE HONOURABLE PANDIT SHYAM BIHARI MISRA :** It may be very good of my Honourable friend Seth Govind Das to ask where is the harm, but the harm lies in this that a man with evil motives may have a licence to abuse any prophet or avatar as much as he likes and yet may go scot free. That is the only difficulty.

My Honourable friend seems to think that this is a repressive measure ; I entirely repudiate that suggestion. For the matter of that, he said that the measure is a bad thing ; but I say it is a very good thing. If it may be contended that this Bill is a bad thing, I would say the whole of the Indian Penal Code is an evil thing, and therefore you should annul or repeal it outright ; then anybody could slap me, or commit a murder, or run away with another man's wife, or do anything else he likes, and he would not be punishable at all. I think, Sir, that would take us back to the primitive state of human society to which the Honourable the Home Secretary referred in the beginning of his speech.....

**THE HONOURABLE SETH GOVIND DAS :** I never said that the whole Indian Penal Code is a bundle of evil.

**THE HONOURABLE PANDIT SHYAM BIHARI MISRA :** I am glad to hear that the Honourable Member did not say that. But I think, Sir, it is very essential that this Bill should be put on the Statute-book as early as possible, and it would be fatal to postpone it till the Delhi Session. I, therefore, oppose the amendment of my Honourable friend Mr. Khaparde.

**THE HONOURABLE THE PRESIDENT :** The original question was :

"That clause 2 do stand part of the Bill."

Since which an amendment has been moved :

"That to section 295A proposed to be inserted in the Indian Penal Code by clause 2 of the Bill the following be added :

*'Explanation.—It is not an offence within the meaning of this section to criticize the principles, doctrines or tenets or the observances of any religion with a view to investigate truth or improve the conditions of human society or to promote social or religious reform.'*"

The question I have to put is that that amendment be made.

The motion was negatived.

Clause 2 was added to the Bill.

**THE HONOURABLE THE PRESIDENT :** Clause 3.

(The Honourable Mr. Khaparde did not rise in his place).

**THE HONOURABLE THE PRESIDENT :** Is the Honourable Mr. Khaparde not moving his amendment ?

**THE HONOURABLE MR. G. S. KHAPARDE :** Yes, Sir, I want to move my amendment.

**THE HONOURABLE THE PRESIDENT :** He is keeping the Council waiting.

**THE HONOURABLE MR. G. S. KHAPARDE :** The amendment that stands in my name reads thus :

"That in clause 3 of the Bill, sub-clause (ii) be omitted, and sub-clause (iii) be numbered (iv)."

[Mr. G. S. Khaparde.]

Sir, one thing I have learnt, and it is this, that in moving this amendment, I should not be very brief, and because I happened to be very brief in my previous amendment, my remarks were misunderstood and criticised on a wrong point. I am not going to speak on my previous amendment, but I shall confine myself to this amendment. In plain words, this Bill says that nobody can institute a prosecution without the sanction of the Local Government, and I say it should not be so. I say so, because from my point of view I look upon this section as more or less an explanation of that provision of the Indian Penal Code which protects persons from being defamed. As I have already dealt with that point, I shall not go further into that question. But in this particular instance it becomes necessary to go a little further. It is in this way, that when a prosecution which is sanctioned by a Local Government goes to a court, it goes there with a certain amount of prestige, with the help of the Public Prosecutor and with more or less a great deal of prejudice against the accused. The Magistrates are also afraid of giving an acquittal in a case in which the Government itself is the prosecutor. That thing, as I have found, always works to the great disadvantage of the accused.

My second ground for taking away this power is that the Government has been accused both in the public press, in the other House as also in various other places, of being partial. Of course, I do not subscribe to that view, but still that accusation has been made, and it has been illustrated to me at one time like this. Supposing your son is fighting with the son of your neighbour and then you are there. You get up and say, "Boys, boys, do not fight". But in so saying you hold the hands of your neighbour's son, you do not hold the hand of your own son who goes on beating the son of your neighbour. (Laughter.) And it was said that Government were doing something like this, and I say it is not the right thing to do. Why should Government expose itself to this sort of accusation in this manner, especially when there is so much feeling roused in the country and when people have imputed motives? What has happened is this, that in speaking of the *Rangila Rasul* case, there were some people who demanded that not only the Judge who delivered the judgment in that case should be removed, but they suggested that even the Chief Justice should be dismissed. Now, you see how Government is being accused. I am therefore anxious that the Local Government and the Government of India should not be a party to a controversy of this character. Let the people fight it out. Where is the harm? There will be more cases in the courts. All right; the Magistrates have got ample powers to dispose of frivolous prosecutions. They have got powers to award compensation to the accused; and they have got powers to dismiss cases. Why don't you allow the parties to fight the matter out between themselves? Why should Government intervene? I say so for this reason that in the debate on this case, it was suggested that this *Rangila Rasul* book was written in answer to a certain other book called the "19th Century Saint" or something of that kind. Then the question arose as to why the publisher of the "19th Century Saint" was not prosecuted and why the author who answered it was prosecuted. The reply of the Government was that, because they did not think that this book would lead to rioting, and because they thought that the publication of the book *Rangila Rasul* would lead to rioting, the publisher of this book has been prosecuted. Now, Sir, that reply

of the Government was rather funny, for this reason, that the Local Government is to be the judge, and is the judge, in holding whether a particular book will or will not lead to rioting and a breach of the peace. Then the offence is a breach of the peace. The offence has nothing to do with your defaming the Saint. Suppose there are one or two Muhammadans living in a village, and one of the men says something foolishly to another. These two people may complain, but if the Local Government thinks that there will be no danger of a breach of the public peace, they need not institute any prosecution. The case can be dropped completely if the Local Government consider that there is no danger of a breach of the public peace. I say, therefore, Sir, that this law reduces itself to a wrong principle, that is to say, it justifies what was said recently that, under British rule whoever shouts most gets most and whoever does not shout gets nothing at all. That was said by a very great person ; I do not want to mention his name.

Then it comes to this, that if there is a danger of a riot breaking out, if I do something and there is a danger of people fighting, then alone the Government would interfere, not because my feelings have been hurt, but to prevent and put down the riot. That, I think, is not the right law, nor is it the intention of this Bill. The Bill intends that, when the religious feelings of a community are wounded on a particular question, the man whose feelings have been wounded should be able to bring a case and get justice, though he may be only one man in a whole town. He should be in a position to institute a prosecution and submit the case for judicial decision. It should not be that any person, the District Magistrate or perhaps on the report of the District Magistrate the Local Government may determine whether that is a case worth fighting about. It is not at all a private case then : it becomes a case which Local Governments can always institute. This law is practically nothing. So as it was said on the previous occasion, this provision practically nullifies the whole law. It puts the law in the hands of the Local Government. You may ask the Local Government to prosecute, and if the Local Government does not choose to prosecute, then whatever your feelings may be, however hurt you may be, you have got nothing to do but just submit. I looked for this point in the Report of the Select Committee and all that they have got to say against that point was that " to avoid factitious and vindictive prosecution " this power has been taken by the Government. I say the Penal Code has already given this power to settle cases of the kind to Magistrates, and if they think it necessary they can punish and award compensation. Under section 499 as it stands I can go to court and say so and so defamed my mother or my father and so on. But, as a matter of fact, do you find that there are many defamation cases brought ? Not at all. Similarly, if this permission were given to people to prosecute others for wounding their religious feelings and so on, there will not be more cases than there are now. That is my idea. But there is a further thing ; that if these people do bring such suits, very well, they will take the consequences ; they will be fined and they will have to pay compensation, the law being that you are not permitted to speak against a saint or an avatar or a sainted person. That being the law there will be a practical understanding in this country, the country will quiet down, and all these difficulties will disappear. Therefore, I say this power of Government intervention should be removed. The third reason for it is this. I look upon these people who wound



[Mr. G. S. Khaparde.]

religious feelings not as criminals or as bad men. They are people who are generally ignorant and they get obsessed with what they are thinking of. And they imagine there is no truth beyond what little they have got in their brain. So that if they find people worshipping differently, they have narrow ideas and they resent it and that is how the quarrel arises. To my mind these are people who deserve more to be pitied than to be punished. It is our own fault that after our dominion for nearly 200 years there are so many people left ignorant and they are not able to understand and talk about religion. Furthermore, education has not educated everybody that has to be educated or brought him to a reasonable frame of mind. To that extent the responsibility belongs to the educated classes also. But the fact remains that there are these poor ignorant people, not criminal people, not bad people, but who having conceived these narrow ideas and having been brought up in these narrow ideas, resent everything that is against their preconceived notions and therefore they go about and then they talk and people call them fanatics. A fanatic is not a murderer. A fanatic may commit murder : then he is a murderer. But these fanatics are neither criminal people nor bad men.

THE HONOURABLE THE PRESIDENT : I think the Honourable Member has forgotten his amendment.

THE HONOURABLE MR. G. S. KHAPARDE : My amendment is that a prosecution should not be dependent on the good will of the Government. It should depend on the feelings which the complainant has. That is the meaning of my amendment and that I am trying to elucidate by saying that I take this view of the matter for this reason : that these fanatic people should not be considered as criminals or bad people. I think they are misguided people and the fittest candidates for the nearest lunatic asylum. They are no better than that. So one ought not to feel angry with them and magnify their offence into an attempt to cause a riot.

I therefore propose to take away this power or rather the restrictive clause by which you can institute a prosecution only on the permission or the concurrence of the Local Government. That is my reason, Sir, for moving the amendment.

THE HONOURABLE MR. J. CRERAR : Sir, I hope my Honourable and learned friend will not accuse me of any discourtesy if in my reply to his somewhat expatiating argument I am brief and restrict myself to his amendment. I congratulate the Honourable Member on the versatility of his argument. A few minutes ago he represented with all the vehemence at his command the grave dangers which we were likely to incur if we subjected the honest critic to the penalties of this law. Now, the Honourable Member has argued a totally different proposition ; in fact, a proposition diametrically opposed. After having spoken at great length in favour of the honest critic and imploring the House to extend greater protection to him, he now proposes to deprive the honest critic of what is perhaps the most effective protection extended to him in the Bill. Because it must be apparent that where animosities run high and religious feeling is inflamed, nothing is more likely to happen, if this matter is left to private initiative, than that malicious, or at any rate, ill-judged and mis-

guided prosecutions, will be brought up. If we do this, so far from applying a remedy to the evils which we have in view we shall be doing a great deal to inflame them. The Honourable Member's reply is that after all, courts and Magistrates have powers to punish frivolous or vexatious prosecutions. They can inflict a fine of Rs. 100. I do not think that precisely the kind of man whom the Honourable Mr. Khaparde has in mind, the honest critic, the man who in point of fact has not brought himself within the danger of this Act, the man who has used throughout most scrupulously temperate language—that that man should be prosecuted, should be put on his defence, exposed to the anxiety of a defence and possibly to heavy expenditure. The remedy my Honourable friend relies on is that the prosecutor should be fined a hundred rupees. I do not think, Sir, that that is adequate.

THE HONOURABLE MR. G. S. KHAPARDE: He can bring a civil suit in addition.

THE HONOURABLE MR. J. CRERAR: The truth of the matter is this, that there are two clauses of essential importance in this Bill. The first is the clause which creates the offence, the second is the clause which requires the authority of the Local Government to a prosecution. Having regard to the state of affairs with which we propose to deal, recalling the fact that our intention throughout is to allay these controversies, what the Honourable Member proposes to do is tantamount to bringing out a barrel of gunpowder and exposing it in an open place across which the sparks of a smouldering fire are already flying, and to imagine that in doing so we shall not only be fanning up the conflagration but adding the extreme danger of an explosion.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 3 do stand part of the Bill."

Since which an amendment has been moved:

"That sub-clause (ii) be omitted and sub-clause (iii) be numbered (ii)."

The question I have to put is that that amendment be made.

The motion was negatived.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: (Punjab: Nominated Non-Official): Sir, we are very thankful to the Government for this measure and I am very glad that it has been passed in another place. But I may say that a mountain has laboured and it has brought forth a ridiculous mouse. After all, if the Bill is meant to be effective, it must be effective. There are many men who I know simply for their livelihood have broken the law and got into jail. They come out as great heroes (*An Honourable Member*: "Question.") I know that when they come out they go to members of their community who, thinking they are heroes, give whatever help is needed to them. I want to give a deterrent punishment so that the man may not commit the offence again. The idea underlying my amendment is that the sentence should be severer. I read to the House the amendments that I propose:

"That in sub-clause (iii) of clause 3—

(c) for the words 'shall not arrest without warrant' the words 'shall arrest without warrant' be substituted,

[Sir Umar Hayat Khan.]

(b) the word 'warrant' where it occurs for the second time be omitted, and

(c) for the figure and word '2 years' the figure and word '7 years' be substituted."

THE HONOURABLE MR. KUMAR SANKAR RAY \*CHAUDHURY : On a point of order Sir.

THE HONOURABLE THE PRESIDENT : Order, order. Before the Honourable Member from the Punjab proceeds any further, I should save the time of the Council by pointing out that of the three amendments which he proposes to move I should only be able to put the first to the Council. The second one proposes to omit the word "warrant" from the column in the Schedule to the Code of Criminal Procedure which must contain either the word "warrant" or the word "summons." That column indicates whether a warrant or a summons should issue, and it is impossible to leave that column blank, which the Honourable Member proposes to do by his amendment. As regards the third amendment, I may point out to him that the second Schedule to the Code of Criminal Procedure, in so far as it defines the sentences which are to be passed for any offence, merely reproduces the sentences provided by the Indian Penal Code. Therefore, if the Honourable Member wished to alter the sentence, his proper course was to propose an amendment to section 295-A. of the Indian Penal Code which has been introduced into the Indian Penal Code by clause 2 of the Bill. The House has already agreed to clause 2 standing part of the Bill, and therefore the sentence of two years now stands as part of the Indian Penal Code provided the Bill is passed. It is futile to alter the Schedule to the Criminal Procedure Code when the corresponding section of the Indian Penal Code is not changed. Therefore, will the Honourable Member confine himself to the first amendment ?

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN : Why I say that the offenders should be arrested without warrant is this. If you take, say, the frontier, a man might break the law, and by the time the warrant is issued he might be on the other side of the border and will never be caught. There is a man now in Simla whose relation killed a man of the other religion in the troubles that arose out of the *Rangula Rasul* case and this man was a surety for Rs. 2,000. This man ran away and the Rs. 2,000 were naturally forfeited. He goes about saying that this man, his relation, who has run away, has done fine work and you will find people willing to pay and lots of people are paying him. Therefore I say the offender should be caught without a warrant. Those who have done magisterial work in these days know that a warrant is nothing. A constable goes with a warrant and you give him Rs. 5. He will simply write on it that this man is not in the village and has gone. So, Sir, a case which ought to be finished in one month drags on to six or seven months. One cannot get at the offenders unless sections 87 and 88 are used, but supposing this man, who is an offender, is the son of a man still living, he would not have any land or property in his name and will run away with impunity. He would be going about all over the place and nobody would give a clue to his whereabouts. Another thing I want to say is this, though according to the Honourable President, I cannot move it. If there was a deterrent sentence, it would be more effective. If a man kills another man he is hanged, but if a man does a thing by which thousands of people are killed, you would treat him mildly....

**THE HONOURABLE PRESIDENT:** Order, order. The Honourable Member is now speaking to his third amendment which is not before the Council and is not likely to be before the Council.

**THE HONOURABLE MR. H. G. HAIG** (Home Secretary): Sir, I am afraid I must oppose this amendment. I am not sure whether my Honourable friend Sir Umar Hayat Khan has altogether appreciated the effect of it. In certain cases power is given to the police to proceed on the information that is given to them to initiate action by arresting persons without warrant. In other cases it is necessary to proceed to a Magistrate and get the orders of the Magistrate who issues either a summons or a warrant. Now, Sir, the House has just affirmed the principle and inserted a provision in this Bill that no proceeding should be taken without the sanction of the Local Government. In other words, it is clearly impossible that the police should be authorised to initiate action by arresting without warrant. The action has to be initiated by the Local Government, and if my Honourable friend consulted the Schedule to the Criminal Procedure Code, he would find that in every case in which the sanction of the Local Government is necessary before a prosecution can be instituted, this same provision is inserted and naturally inserted that the police shall not arrest without warrant, even in such a serious offence as that of waging war against the King. I therefore oppose the amendment.

**THE HONOURABLE THE PRESIDENT:** The original question was :

"That clause 3 do stand part of the Bill."

Since which an amendment has been moved :

"That in sub-clause (iii) of clause 3—

for the words 'shall not arrest without warrant' the words 'shall arrest without warrant' be inserted."

The question is that that amendment be made.

The motion was negatived.

**THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY:** Sir, I beg to move :

"That in sub-clause (iii) of clause 3 for the words 'Not bailable' the word 'Bailable' and for the words 'Not compoundable' in both places where they occur, the word 'Compoundable' be substituted."

By these amendments I want to mitigate to some extent the rigour of this new piece of legislation which even in the opinion of the Honourable the Mover of the Bill is almost redundant. We ought not to be hard upon people for expressing their religious opinion unless and until they are actually found guilty of the offence contemplated. Before that we ought not to be hard upon the accused and should give them every facility for a fair trial. They should also be given opportunities to apologise and for the case to be withdrawn against them upon doing so. I therefore move the amendment.

**THE HONOURABLE MR. J. CRERAR:** Sir, in rising to oppose this amendment I shall deal first with the suggestion that this offence ought to be made compoundable. I must remind the House that the reasons underlying the compoundability of offences which are contained in section 445 of the Criminal Procedure Code are limited by one very obvious and one very necessary

{Mr. J. Czerar.}

consideration. It is that the offence must be an offence which injures some particular individual and that particular individual has the right—in certain cases, absolute, in other cases, with the permission of the Court—to compound the offence. Now, Sir, I somewhat doubt whether the Honourable Member himself fully appreciates in the first instance that the amendment he proposes would inculcate the principle that a man should accept pecuniary compensation for an insult to his religion. Is that really a tenable proposition? Apart from that, is it practicable? Because the offence contemplated by the Bill is an offence in which the religion or religious beliefs of a whole class of His Majesty's subjects are affected. Are you going to allow in a case of that kind any particular individual out of the whole class affected to compound the offence? I submit, Sir, the thing is not only wrong in principle but impracticable.

As regards the question whether an offence should be bailable or non-bailable, I have two points to make. In the first place, I think it is in the highest degree probable that the vast majority of people who are likely to be guilty of an offence under this section will be of the type of scurrilous scribbler who writes from some obscure den in the bazaar and who, when the law is set in motion against him, will set himself in motion away from the law—in other words, abscond. As for the case of more responsible people who, from their character, are likely to appear to answer a charge in court,—well the answer is simply this. The courts can take full cognisance of such circumstances and on the issue of a warrant allow bail. Apart from that, the people so accused have a remedy in the Sessions and High Courts who have complete power in the matter of granting bail. In this matter something must be left to the discretion of the Courts, especially if you are prepared to leave to the Courts the greater discretion to try such cases at all.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: To save the time of the Council I would like to say a few words as regards the amendment before the House instead of dealing with my own. Sir, with regard to the question whether this offence should be made bailable or not, I think it would be extra harsh upon the people who will be made the victims of this offence not to allow them bail.

The principle of not allowing bail is this, that the accused may not abscond. With regard to this fact, I beg to say that this can be secured by taking a heavy bail, and it might be in the discretion of the Court to take a bail of Rs. 5,000, Rs. 10,000 or even Rs. 20,000 or upwards. There would be such cases, as pointed out by the Honourable the Home Member, where a man from a remote corner might publish a pamphlet and inflame feelings and he might then abscond. It is quite likely that such cases might happen, but it is not unlikely also that some persons, men of status in society, men of learning and position, might find themselves called upon to prove their innocence in court with regard to this charge of having committed an offence under this section. I beg to say also that when section 153-A prescribes the same amount of sentence as section 295 and section 295-A, and when those offences are bailable, there is no reason why this section should be made extra harsh. Apart from this, there is another ground which appeals to me. The reason why

such an offence should be made bailable is this that the cases under this section will be tried in the Sessions Court and, as I understand, the procedure of the law is that an inquiry is held by a first-class Magistrate before the accused is committed to the Sessions to take his trial. It means that there is an inquiry to be held first, which would mean some time for the accused to appear therein and to watch the prosecution evidence produced against him; and if the Magistrate thinks that it is a fit case for committal to the Sessions Court, he of course commits the accused to the Sessions Court. Sessions Judges are busy officers of Government, and the dates of trials even in murder cases, I can say as a fact, are fixed two or three months after the commitment. If two months are taken in the original court over the inquiry, and three more months are taken in the Sessions Court to complete the trial, that means five or six months during which the accused will have to remain in the lock-up for nothing, when the sentence he has to undergo, if the Judge thinks it fit to give him the full sentence would be two years, and it would mean one-fifth of the sentence extra, for which he will have to remain in the lock-up without any cause. Apart from that, a man ought to have the full opportunity and the full help of the law to prove his innocence, and the accused may want to engage lawyers to support his case, which should not be denied to him. So on these grounds, Sir, I think, that the offence should be made bailable.

THE HONOURABLE MR. G. S. KHAPARDE: Sir, I have got an amendment later on (No. 9), that is about the offence being made compoundable. I do not know if you, Sir, would allow me to speak now?

THE HONOURABLE THE PRESIDENT: The Honourable Member may speak now.

THE HONOURABLE MR. G. S. KHAPARDE: Thank you, Sir. My object in making it compoundable is that this legislation is intended, as far as possible, to bring about a reconciliation also; it is not intended merely to cure all the evils by punishment; and if the offence becomes compoundable, both the accused and the complainant will feel the inconvenience of it, and it will be easier to allow the compounding to take place. That will restore good will between two individuals or between two communities or between any large number of people, and that avenue of peace and agreeable condition should not be shut out. In the case put by the Honourable the Home Member, the man is usually an insignificant man who might disappear, as pointed out by my Honourable friend, the Honourable Mr. Oberoi, but in the larger number of cases that would not occur. In the larger number of cases I am willing to take it both ways. Supposing the man complaining accepts some consideration for compounding, but the man who commits that offence is fined so much. So, there is a punishment. Supposing a community is insulted, then the community will put pressure on the complainant not to accept a compromise unless something for the benefit of the community is done. If the accused builds a mosque, or a *dharamsala* or digs a well and if the community consents to it, the accused is equally punished; and the compoundable provision will keep both parties agreeable and more likely to work together than when you carry it to the bitter end and the man is punished. I therefore support this amendment about the offence being made compoundable.

**THE HONOURABLE THE PRESIDENT:** The original question was :

“ That clause 3 do stand part of the Bill.

Since which an amendment has been moved—I had better put the amendment in two parts separately—

“ That in sub-clause (iii) of clause 3 for the words ‘ Not bailable ’ the word ‘ Bailable ’ be substituted.

The question I have to put is that that amendment be made.

The amendment was negatived.

**THE HONOURABLE THE PRESIDENT:** Further amendment moved :

“ That for the words ‘ Not compoundable ’ in both places where they occur the word ‘ Compoundable ’ be substituted.

The question I have to put is that that amendment be made.

The amendment was negatived.

**THE HONOURABLE THE PRESIDENT:** The question is :

“ That clause 3 do stand part of the Bill.”

The motion was adopted.

Clause 3 was added to the Bill.

**THE HONOURABLE THE PRESIDENT:** Clause 1. The question is :

“ That clause 1 do stand part of the Bill.”

**THE HONOURABLE MR. KUMAR SANKAR RAY CHAUDHURY:** Sir, I beg to move :

“ That to clause 1 the following words be added :

‘ It shall remain in force for a period of three years ’.”

Sir, we are passing no doubt through troublous times, but we all hope that it will be a passing phase in the political evolution of India and all these troubles will soon pass away. I am, therefore, asking the House to pass this measure only temporarily. If necessary, we may renew the measure from time to time. There is a precedent for doing so even in the British Parliament. The suspension of the Habeas Corpus Act takes place only from time to time. This measure also, I may venture to submit, is one of a similar nature inasmuch as it involves a serious interference with the freedom of speech of the people specially with regard to the very laudable object of social and religious reforms. Although some safeguard is being sought to be provided for excepting these objects, the offence made punishable under this Bill is one in which these very questions will frequently have to be gone into, and the line of division between what is fair and just and what is malicious will always be very difficult to determine.

Moreover, as the Honourable Mr. Haig himself admits, section 153A of the Indian Penal Code is sufficiently wide to deal with such cases ; that is a permanent provision in the Statute which may sufficiently deal with such cases in future.

I therefore move the amendment that stands in my name.

**THE HONOURABLE MR. J. CRERAR :** Sir, I shall be very brief in opposing this amendment. The greater part of the arguments which the Honourable Member has employed are directed against the principle of the Bill itself and not against the duration of the Act if the Bill becomes an Act. Limiting myself therefore to what is really before the House, that is to say, the duration of the Act if the Bill is enacted, I have this to say. In the first place, I do not agree with—in fact I very definitely dissent from—the view that the Bill proceeds merely from a certain current controversy, however important that controversy may be. It is true that that controversy has had the effect of bringing the principle of the Bill very forcibly to the attention of the public and of Government. But there is, quite above and beyond the controversy, the principle involved. Nevertheless, dealing with the point of the controversy, it is clear that it is an extremely dangerous controversy. We have not very good grounds for assuming that after the next three years conditions will be such as no longer to necessitate what we propose. It would certainly be extremely dangerous to put a term of three years upon this Bill, because the mere expiry of that period would in itself tend to revive and restimulate the controversy. Quite apart, however, from any considerations of a temporary or a circumstantial nature, what the House must really consider is the principle of the Bill. If the principle of the Bill is a sound one, then it is a principle of permanent value and validity. And I do not think that the House, if they agree, as I think they are bound to agree, that the principle is a sound and valid one, should palter with its conscience and its decision.

**THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR :** Sir, the Honourable Member who suggested that this Bill should have only a temporary application contended that the necessity of such a law was of a temporary nature, and therefore it was not necessary that this law should be made permanent. It was said that all this trouble is due to the present state of feelings between the two great communities and that it is only a temporary phase which is bound to pass away. Consequently, there will be no necessity in the future for a permanent penal law on the Statute-book. Sir, I may at once state, and I believe that my Honourable friends in this House know from the way in which I have been making my opinion public in this House, that I am one of those who in spite of the present unhappy conditions have a firm faith in Hindu-Muslim unity and believe, and believe very strongly, that all our differences are only superficial and not real and that they are bound to disappear sooner or later—I hope very probably very much sooner than later. But, Sir, I confess that all this deep-rooted faith and the strength of my belief cannot dispel the fear from my mind that fanaticism and religious bigotry would be quite likely in the future, as they are now. Thus, Sir, the necessity for this Bill is not at all of a temporary nature. We realise that this is a sort of disease to which the human mind, when it is overpowered with zeal and too much of religious fervour, is susceptible and therefore it may be that at present, when we are in these unhappy conditions, this disease has become more pronounced. But to say that with happier circumstances the disease itself will vanish is to hope for the impossible.

I see no harm and no wrong, so long as we realise that there is the possibility of such a thing occurring. We should have the remedy readily available, in cases when it is necessary. To say that the existence of the remedy



[Saiyed Mohamed Padshah.]

would go to beget the disease is not correct. I therefore oppose the amendment.

THE HONOURABLE THE PRESIDENT : The original question was :

“ That clause 1 do stand part of the Bill.

Since which an amendment has been moved :

“ That to clause 1 the following words be added :

‘ It shall remain in force for a period of three years. ’

The question I have to put is that that amendment be made.

The motion was negatived.

THE HONOURABLE THE PRESIDENT : The question is :

“ That clause 1 do stand part of the Bill.’

The motion was adopted.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. H. G. HAIG : Sir, this measure has been very fully considered and debated by the Council this morning in respect of its principles and its details, and I do not think it is necessary for me at this stage to repeat the considerations which are still fresh in the minds of all Honourable Members.

Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE SETH GOVIND DAS : Sir, at this late hour, I do not want to take more than a few minutes of this House which is in the habit of sitting for a very short time generally.

Now, Sir, according to my expectations all the amendments brought forward in this House have been rejected. My Honourable friend, Sardar Shivdev Singh, pointed out that without some of the amendments the Bill would be a very drastic measure. I do not know what my Honourable friend and the Honourable Members of this House who think in the way in which my Honourable friend thinks and who brought so many amendments to improve this evil measure would do now after all the amendments have been rejected.

Well, Sir, this I leave to them. During the debate on this Bill some Honourable Members pointed out that this Bill is in fact the outcome of the *Rangila Rasul* case. If that is so, I say this is a still more dangerous and mischievous measure. If on any and every judgment of a controversial nature, such Bills are to be introduced, I certainly think that it is not the right way to deal with the question. When I say so, Sir, let me not be misunderstood. I am in no way supporting what is written in *Rangila Rasul*. I am against all those who accuse any Prophet. In that respect, I shall ever remain opposed to any accusations made by a Hindu against the Muhammadans or their Prophets, or by a Muhammadan against Hindus and their avatars. My Honourable friend Mr. Haig said that when I said that the Hindu avatars did not require protection, perhaps I did not give very cogent reasons for the position I took up, and that perhaps I did not voice the feelings of my co-religionists. In this respect what I have to say is this that there were several pamphlets of the same nature or even worse than the *Rangila Rasul* against the Hindu avatars. These pamphlets were published against the Hindu

avatars much before the publication of *Rangila Rasul*. But, Sir, I am proud to say that none of my co-religionists had ever agitated in this respect nor did they press for the enactment of any measure such as the present one.

Then, Sir, the whole question is whether the present Bill is going to meet the present situation. Hindu and Muslim quarrels were unfortunately going on before the publication of *Rangila Rasul* though during the non-co-operation time we did not even hear about such quarrels.

The whole question, Sir, as has been rightly pointed out by my Honourable friend, Mr. Haig, is a change of heart; and let me point out that this Bill is not going to bring about that change of heart which is wanted for the improvement of this deplorable situation. When, Sir, as my Honourable friend Mr. Haig himself has pointed out, this Bill is not going to improve the situation and when it is going to give more powers clearly in the hands of an alien Government, I cannot, Sir, in any case support the Bill and I oppose the motion of the Honourable Mr. Haig.

THE HONOURABLE THE PRESIDENT : The question is :

"That the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose, as passed by the Legislative Assembly, be passed."

The motion was adopted.

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The Council then adjourned *sine die*,  
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